A REPORT ON THE STUDY OF COMPENSATION FOR VICTIMS OF AUTOMOBILE ACCIDENTS

W. D. Bowker. — Keep.

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On The Study Of

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For Victims Of

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Prepared by Special Committee of the Saskatchewan Government Appointed to Study the Problem of Compensation for Victims of Automobile Accidents.

Published

FEBRUARY, 1947. REGINA, SASKATCHEWAN

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Price $1.50

THE HON. O. W. VALLEAU,
Minister in Charge of The Saskatchewan
Government Insurance Office.

SIR:

On the 17th day of September, 1945, you directed me to organize a Committee of representatives from The Highway Traffic Board and The Insurance Office to study the problem of compensation for the victims of automobile accidents. The Committee was formed forthwith, its members being: Messrs. W. H. Dunn, John Green, J. B. Greig, H. A. Forsyth and C. W. Garth, with myself as Chairman.

Here may I acknowledge the considerable assistance which the Committee received from time to time from Mr. B. Sufrin, who engaged in initial researches, Drs. Cecil and Mindel Sheps as medical consultants, Dr. C. A. Wright, K.C., Mr. F. A. Brewin and Dr. M. C. Shumiatcher for legal advice.

The Automobile Accident Insurance Act, 1946, enacted by the Legislature during the spring session, was based upon the recommendations of this Committee as communicated to you in various earlier reports. The present report is, therefore, largely a consolidation and elaboration of facts and principles with which you are already familiar.

You will, however, note that we have taken the opportunity of indicating instances and methods whereby the plan may be widened to give increased benefits and wider coverage. The Committee does not pretend that the plan in its present form is perfect. We are of the opinion, however, that the principle of compensating all those who suffer economic loss by reason of personal injuries sustained in a motor vehicle accident is more adequate from both the social and private view than is the principle of public liability insurance which provides indemnity only in proportion to the degree of fault for which the insured motorist is held legally liable. Until now, it is this latter principle which legislatures have utilized as a means in their attempt to meet the problem. Despite the claims that have been made for existing forms of legislation, the fact remains that the accident incidence per motor vehicle has steadily increased and is still increasing. Efforts to reduce the number of accidents must be maintained and accelerated. But the Committee believes that so long as any person is exposed to the risk of physical or economic loss by reason of the presence of the motor vehicle on the highway, there is a matter of concern to the organized community no matter how insignificant that person might be.

Part I of this report deals with the problem with which we are concerned and with the various attempts which have been made to solve it. Part II deals exclusively with the outline of a plan which the Committee has developed as a solution in Saskatchewan.

Yours very truly,

W. H. Dunn.

Manager.

THE SASKATCHEWAN GOVERNMENT
INSURANCE OFFICE.

Regina, Sask., June 29th, 1946.

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PART I

SECTION 1.—INTRODUCTION

1. SCOPE AND FUNCTION OF THE INTER-DEPARTMENTAL COMMITTEE.

The work of the Committee proved to be a major task and was divided into the following phases:

(1) An analysis of:

(*a*) The automobile accident problem in this province;

(*b*) Orthodox insurance practices and legislation as related to the automobile accident problem;

(c) Statutory and proposed modifications of the orthodox practice.

(2) The development of a plan which might be expected to solve the problem in Saskatchewan, economically and efficiently. The Committee was assisted in no small degree by the thorough investigations which have been undertaken by many similar Committees and by treatises dealing with one or more aspects of its work. The Committee was not authorized to hold public hearings but it is submitted that the problem is chiefly one of statistics and the various opinions respecting both existing and proposed methods of dealing with the problem, have been so well discussed and analysed by authorities in the field, that the Committee has been able to come to its conclusions, giving every point of view its considered deliberation.

Financial responsibility laws and liability insurance have not proved adequate. The continuing attempt to solve the difficulties related to traffic accidents in jurisdictions which adhere to the principles of these types of laws, in itself, is an admission of failure. The financial responsibility law and the compulsory public liability insurance laws have been developed to the highest degree. Legislatures have confined their attention to this type of legislation and despite the controversy raging between the proponents of compulsory public liability insurance laws and the proponents of the financial responsibility law, the Committee is persuaded that the former is merely a glorified form of the latter. Both have a fundamental defect and it is believed that the solution lies in taking a fresh approach. The economic loss consequent upon traffic accidents is a social loss. It is a form of social waste. The success of any solution must therefore be measured by the degree to which it reduces this waste. The Committee has therefore conducted its investigation with the hope of finally evolving a plan which will compensate the victims of automobile accidents, the cost being charged to the appropriate department of production.

The economic importance of the modern automobile to civilization is indisputable. If statistics were available, it might possibly be shown that a high degree of correlation exists between the number of cars and trucks which traverse the highways of a nation, and the prosperity, in terms of living standards, which that nation enjoys. In this regard the growing traffic upon the road systems of Canada is a good omen for the future economic development of our nation. Unfortunately, the increase in the volume of highway traffic and the speed of travel is accompanied by a more than proportionate increase in the number of accidents causing injuries and death. As this is true for Canada as a whole, so is it true for the Province of Saskatchewan.

2.—THE TRAFFIC ACCIDENT PROBLEM IN SASKATCHEWAN

In this Province, the average normal trend in the pre-war years, commencing in 1932, indicates an average increase of five in the number of fatalities resulting from automobile accidents each year, but the increase in the potential danger of the automobile is more strikingly illustrated in the demonstrable fact that the frequency of accidents per motor vehicle is increasing at a greater rate than is the number of vehicles on the highway. (See Exhibit "F", Appendix No. 4). The statistics of accidents for the years 1941-45 are not of too great assistance in determining what the future toll of traffic accidents might be but the introduction of gas-rationing, tire and automobile control, and the restrictions on traffic are all important factors whose influence would distort the normal curve. It cannot be accurately predicted whether, in the first year at least, the normal trend will be immediately restored or whether a new curve will come into being. The factors which might be expected to enter into the chain of causes determining the frequency of accidents are:

(*a*) the return of many young men to civilian life who have grown accustomed to the operation of motor vehicles under war conditions; and

(*b*) the higher general level of prosperity as compared with the pre-war years, stimulating an even greater degree of activity on the highway.

An indication of what might be expected during this coming summer is indicated by the marked upward swing in the number of fatalities with the removal of gas rationing in 1945. There were 7, 8 and 11 persons killed in automobile accidents in Saskatchewan in the months of August, September and October respectively as compared with 3, 3 and 4 persons in the same months of the preceding year. It would therefore appear to be quite justifiable to conclude that projecting the normal pre-war trend into 1947, in the neighbourhood of 76 persons will perish in automobile accidents during the licence year 1946-47. Add to this figure, 1,140 (the proportion of fatal accidents to those resulting in personal injuries is approximately one to fifteen) for personal injury, we find that all classes and types of automobiles in Saskatchewan are likely to cause death or personal injuries to 1,216 people.

The magnitude of this problem, of public concern everywhere, is emphasized when a comparison is made between the casualties which Canada suffered during the past six years of war and the number of people killed and injured as the result of traffic accidents during that same period. "In six years of war more than 94,000 Canadian servicemen were killed, wounded or missing. During the same six years, 10,000 Canadian were killed and 160,000 injured in traffic accidents in Canada. Road casualties at home were nearly twice our overseas casualties despite the reduced traffic and lower accident rate resulting from gas rationing." —(*"Death on Wheels"*, by Royd E. Beamish, page 12, Macleans, Feb. 15, 1946.) Much has already been done to alleviate the sufferings entailed by the victims as a result of the former, but, to date nothing has been done to relieve the sufferings of the victims of the latter.

What the economic cost of these deaths, together with personal injury, will be, is impossible to calculate but certain conditions are indicative. During the licence year 1944-45, less than 12% of the owners

of private automobiles in Saskatchewan carried public liability insurance.* Of this number a great many, taxi cabs and buses in particular, were compelled by law to carry public liability insurance. Some others were required to carry such insurance under the Financial Responsibility Law (Part VI, The Vehicles Act, 1945). Of the remainder, a large portion would reasonably be made up of those owners of motor vehicles who possessed sufficient assets to pay any judgment which might be rendered against them, their insurance being merely a precaution for the protection of their assets. It is a notorious fact that persons who are judgment proof do not bother to insure against loss which might arise out of their being held responsible for damage in an accident. Again, the complete depletion of farmers' capital resulting from the depression and drought years has left few farmers with the means by which any judgment rendered against them, might be satisfied. The various governments during recent years have found it necessary in one way or another to protect to a greater extent than ever before, the property of the rural population. There never was an opportunity for a great majority of our motorists to accumulate individual wealth in this province. The motor car is a necessary instrument in the productive process rather than a symbol of the owner's wealth. Individual cases of hardship, both to the uninsured owner who is just getting by, and even more so to the victim of the uninsured driver who will remain uncompensated for the loss sustained in an accident, are known to each one of us. The physical and mental loss to the victims themselves are terrible enough and require no elaboration, but not less terrible is the economic distress and accompanying demoralization which is visited upon the victim's family.

Logically, one would expect that accidents would occur most frequently in the more congested areas. This, no doubt, is an undeniable proposition in regions in which large metropolitan areas are situated. In this province, however, the accident problem is not one confined exclusively, or even to a great degree, to urban centres. The farmer brings his truck and his car in to the urban centres as regularly as he used to drive his horse and buggy, or wagon, to the nearest store. He is often found as a pedestrian in urban areas and therefore should be vitally interested in the traffic accident problem but, as a matter of experience, the closer regulation of traffic in the cities tends proportionately to abate the frequency of accidents. It is on the highway where traffic control officials are few, where restrictions on speed are not severe, and where most people are bent on getting to their destination in a hurry, that most accidents, especially of a fatal nature, occur.

According to preliminary figures of The Highway Traffic Board, there were 790 automobile accidents involving death or injury during 1945. This number is composed of 39 fatal accidents resulting in the death of 48 persons and 751 non-fatal accidents resulting in injuries to 1,153 persons. In addition, there were 1,465 accidents involving property damage estimated at $409,688.

Mr. J. R. MacDonald, Chairman of The Highway Traffic Board, pointed out that these figures were not quite complete as it was unlikely at the time they were given that all reports for December were in. It should also be kept in mind that even a complete tabulation of reports does not mean all accidents are listed. Many accidents, especially those in outlying districts which do not involve death or serious injury, are never reported. There is no accurate estimate of the number or percentage of unreported accidents.

* Highway Traffic Board records indicate 98,153 private cars were registered in 1944-45. There were 11,423 carrying public liability insurance.

Breakdown of accidents involving death or injury, made by Mr. J. Struthers, from a photostat of The Traffic Board's accident map, is as follows:

Those occurring in cities	286
Remainder	504
Fatal accidents in cities	10
Remainder fatal	29

A further brcakdown of accidents involving death or injury by cities is as follows:

Regina, 95; Saskatoon, 85; Moose Jaw, 57; North Battleford, 17; Prince Albert, 11; Weyburn, 7; Yorkton, 7; Swift Current, 7.

Fatal accidents are: Regina, 7; Saskatoon, 1; Moose Jaw, 1; and Swift Current, 1.

Thc above mentioned photostat and breakdown of accidents were made before the final reports of accidents for the month of December, 1945, were available. Complete reports now indicate there were 827 automobile accidents involving death or injury during 1945. This number is composed of 43 fatal accidents resulting in the death of 54 persons and 784 non-fatal accidents resulting in injuries to 1,199 persons. In addition, there were 1,527 accidents involving property damage estimated at $427,342, but available information has not permitted a breakdown on a basis of these complete reports.

Nor does the responsibility for traffic accidents lie exclusively upon any one class of motor vehicle. There may be fewer trucks on the highway than there are private passenger cars, yet, the average truck travels many more miles than the car, and when a truck strikes a private passenger car, the probability of serious personal injuries to the passengers in that car, is much greater than it would be in the case of the collision of two passenger cars.

Taxi cabs are few and restricted in their areas of operation, yet, because the income of thc owner depends upon the number of miles being covered in a given time, the incentive to take extra precautions is lacking.* Bus transportation companies, no doubt, take precautions to obtain the best drivers but the danger of great damage being done to persons is still prcsent and the extent of loss is usually the greatest in a motor bus accident. On thc other hand, no one will doubt that in spite of the hazards accompanying each of these vehicle types, each makes its own peculiar contribution to the provincial economy.

3.—COMMITTEE'S FINDINGS REGARDING ESTABLISHED INSURANCE METHODS AND INTRODUCTION TO LIABILITY INSURANCE.

The Committee early in its studies abandoned the theory that in order for any plan or scheme to be successful, the right to compensation must be dependent upon present concepts of legal liability, i.e., the rule of negligence. Freed from this prejudice, which had so handicapped other Committees, and armed with the results of months of preparation in the form of unbiased research, the Committee on automobile insurance felt that it was in a position to recommend to the Government that what was needed to meet the traffic accident problem in Saskatchewan, was a piece of advanced social legislation.

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* It is a notorious fact in insurance experience that non-owner driven trucks, and especially taxi cabs, are a considerably greater risk than owner-driven vehicles.

The plan proposed by the Committee for introduction in Saskatchewan takes advantage of the experiences of other states in the field of compulsory public liability insurance, adopting and developing elements which are common to all forms of compulsory insurance and providing new concepts to meet situations for which public liability insurance in any form, is inadequate.

Since almost all legislation enacted in the majority of the countries of the world has been following the generally well-beaten path of liability insurance, the Committee first turned its attention to a thorough and detailed study in this field, pursuing as it were, the evolving course of liability insurance from the early, comparatively simple plan brought forth in Britain to the more complex and improved legislation recently enacted in some of the Australian states.

Although in some cases, entitled to earlier attention by virtue of age, the legislation in force and other proposals on this continent have been studied last. One of the reasons for so doing, is that the compulsory automobile legislation introduced in North America is designed with the object of meeting problems more closely approximating our own and hence would naturally contribute more than plans evolved further afield.

The proposals formulated by legislatures and others have hitherto fallen into two general groups: (*a*) the improvement of public liability insurance principles and the increasing of their effectiveness by means of inducing or compelling the whole group of motorists to insure, and (*b*) the elimination of the public liability principle and the substitution of absolute liability along the lines of Workmen's Compensation Law.

Before going on to a more detailed analysis of existing automobile insurance legislation, let us define, for purposes of clarification, the fundamental principle which is of necessity the heart of every proposed or existent automobile accident insurance scheme and which is the essential framework upon which all present legislation is constructed, namely, the principle of liability or fault.

It should be realized for a better appreciation of the failings of liability insurance in the automobile field, that the pseudo-physical appearance and scope of legislation may vary according to such factors as the location and date of such legislation, but at the same time liability with its incumbent faults remains the central pillar about which all the local variations are cloaked.

Liability, as applied to automobile accident insurance, generally comes in two distinct forms. The most common form of liability insurance for automobiles is the form which has been adopted in some states on a compulsory basis and is called public liability. When a driver or owner takes out public liability insurance, he takes out a policy of insurance which insures him against the chance that he will be held responsible in damages for the death of, or personal injuries to a third party in an automobile accident.

In addition to the above, the driver or owner of an automobile may take out property damage liability insurance. This type of insurance is similar to the first but with this essential difference: the insured here is insured against the possibility that he will be held responsible in damages, for an accident causing damage to the property of a third party.

For the obvious reason that public liability insurance is closely related to the problems of compensation for victims of automobile accidents, it will be treated at some length in this report. The principles which are

contained in the recommendation of this Committee may be easily adapted to provide compensation for those who suffer property damage in a motor vehicle accident. Co-existing with, and in some cases supporting liability insurance schemes have been financial responsibility laws. Many jurisdictions not adopting compulsory liability insurance schemes have adopted what are known as financial responsibility laws in an attempt to make the voluntary public liability insurance practice more effective and to reduce the number of accidents by combining guarantees of compensation to injured persons with measures purporting to possess a safety value. For purposes of clarification and comparison of their kindred features, liability insurance and financial responsibility laws are treated in separate sections in this report.

4.—LEGAL LIABILITY AND LIABILITY INSURANCE.

To say that 12% of the owners of motor vehicles carry public liability insurance does not mean that 12% of those who are injured in motor vehicle accidents will be able to recover compensation for their losses. Even assuming that the proportion of insured and uninsured vehicles which are involved in accidents varies directly with the numbers of each, the person responsible and the person whose negligence is the direct cause of an accident, is the one who at common law, must pay damages. If, however, the injured person is himself guilty of negligence which, itself, is a contributing factor to the cause of injury, the other person is absolved from responsibility. If, despite the negligence of both, either party could by the exercise of reasonable care have become aware of the negligence of the other and could thus have avoided the accident, that party is said to have had the "last clear chance" and is held responsible for the entire loss. These principles are fairly simple in the abstract but their application in particular cases, especially since the advent of high speed vehicles, has proved extremely difficult and has led to a myriad of refining rules. These are, no doubt, logical and in themselves can hardly be described as being unjust. But when it comes to their application, the result in any given case is only rough justice to say the least. It is assumed that witnesses are able to remember accurately every detail or happening immediately preceding, and during, the accident and in many cases it is a fine distinction between that which a witness actually saw and what he thinks he saw.

The legislature of Saskatchewan has, in common with many other legislative bodies recognized the inadequacy of the common law rule of negligence as it finds application in the field of motor vehicle liability. At common law, the onus of proving negligence is with the person alleging it. One attempt to alleviate the problems attendant upon applying rules of negligence in motor vehicle accident cases is a reversal of this rule. Section 142 of The Vehicles Act, 1945, provides that, wherever loss is caused by reason of a motor vehicle in motion, the onus of proving that such loss did not entirely and wholly arise as the result of the negligence or wilful misconduct of the motor vehicle operator, is upon the motorist. This provision does not, however, extend to collision cases, or cases where the motorist is being sued by a gratuitous passenger.

A further variation in the common law is found in Section 141 of The Vehicles Act, 1945, which extends the rule that a master is responsible for the torts of his servant. This section makes the owner of a motor vehicle equally responsible for the damage caused by the driver unless the motor vehicle has been stolen or otherwise wrongfully taken out of his possession. The object of this provision is not, of course, aimed at clarifying or modifying the application of the law of negligence, but

makes available the assets of the owner for any loss for which his driver may be responsible. A further step toward making liability laws more equitable was taken with the introduction of The Contributory Negligence Act, 1944. This Act requires the court to apportion damages according to the degrees of fault of each party. The degree of fault is a matter of fact, however, and although it eases the lot of the plaintiff who might otherwise recover nothing because of his contributory negligence, a measurement of fault can at best be a rough approximation.

It is against liability which may be imposed upon him by these laws that the motorist carries public liability insurance. Public liability insurance is not accident insurance which will compensate the insured for injuries to himself. It is merely a contract to indemnify him to the extent of any judgment which may be given against him by reason of his negligence. Public liability insurance is a contract between the motorist and the insurance company and, as such, it is subject to certain conditions, a breach of which bars the right of the insured to recover indemnity. The uniform insurance Act does contain a provision (*section 235 in The Saskatchewan Insurance Act) for the protection of third parties who may be injured by an insured who has broken a condition of the

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* Section 235, The Saskatchewan Insurance Act, being Cap. 121, R.S.S. 1940.

(1) Any person having a claim against an insured, for which indemnity is provided by a motor vehicle liability policy, shall, notwithstanding that such person is not a party to the contract, be entitled, upon recovering a judgment therefor against the insured, to have the insurance money payable under the policy applied in or towards satisfaction of his judgment and of any other judgments or claims against the insured covered by the indemnity and may, on behalf of himself and all persons having such judgments or claims, maintain an action against the insurer to have the insurance money so applied.

(2) No creditor of the insured shall be entitled to share in the insurance money payable under a policy in respect of any claim for which indemnity is not provided by the policy.

(3) (i) No assignment, waiver, surrender, cancellation or discharge of the policy, or of any interest therein, or of the proceeds thereof, made by the insured after the happening of the event giving rise to a claim under the policy; and

(ii) no act or default of the insured before or after such event in violation of the provisions of this Part or of the terms of the contract; and

(iii) no violation of the Criminal Code or of any law or statute of any province, state or country, by the owner or driver of the automobile;

shall prejudice the right of any person, entitled under subsection (i), to have the insurance money applied upon his judgment or claim, or be available to the insurer as a defence to such action.

(4) The insurer may require any other insurers liable to indemnify the insured in respect of judgments or claims referred to in subsection (i) to be made parties to the action and to contribute ratably according to their respective liabilities, and the insured shall, on demand, furnish the insurer with particulars of all other insurance covering the subject matter of the contract.

(5) Where a policy provides for coverage in excess of the limits mentioned in section 232 or for extended coverage in pursuance of section 233, nothing in this section shall, with respect to such excess coverage or extended coverage, prevent the insurer from availing itself, as against any claimant, of any defence which the insurer is entitled to set up against the insured.

(6) The insured shall be liable to pay or reimburse the insurer, upon demand, any amount which the insurer has paid by reason of the provisions of this section which it would not otherwise be liable to pay.

(7) Where an insurer denies liability under a motor vehicle liability policy it shall have the right, upon application to the court, to be made a third party in any action to which the insured is a party and in which a claim is made by any party to the action for which it is or might be asserted that indemnity is provided by the said policy.

contract or the law. This protection to the third party, however, does not extend to a claim for indemnity under any term in the policy giving extended coverage, i.e. (*a*) limits of more than $5,000 for the death of, or injury to, one person in one accident; $10,000 for injury to, or death of, more than one person injured in one accident; $1,000 for property damage; in each case exclusive of interest and costs;

(*b*) passenger hazard;

(*c*) passenger property liability;

(*d*) liability of the owner to an employee injured in the operation or repair of the automobile.

A further limitation on the protection offered by public liability insurance is the statutory exception from liability of the insurer:

(*a*) for liability incurred by the insured under any Workmen's Compensation law;

(*b*) to the insured, his son, daughter, wife, husband, father, mother, brother or sister;

(*c*) for injury to a repair or service man sustained while engaged in the operation or repair of a vehicle.

In spite of Section 235, public liability insurance is obviously aimed at the protection of the assets of the insured rather than the compensation of the victim.

In the absence of all other considerations, public liability insurance could afford the victims of automobile accidents no further protection than do the laws of liability in relation to which it functions. But the insurance companies find themselves compelled to protect their own resources and therefore, many persons who might have a claim against the insured are not able to benefit from the insurance which the insured carries. It is aimed at the protection of the assets of the insured motorist but it does not do this perfectly, for even though a third party may be able to recover by virtue of section 235 of The Saskatchewan Insurance Act, if the insured is guilty of a breach of condition or of the penal law, the insurance company may recoup any amount paid out from the insured himself. Section 235 offers no protection to the passenger at all, and even though passenger hazard coverage may have been taken out by the insured, it is incumbent upon the gratuitous passenger to show gross negligence on the part of the motorist. Since, however, gross negligence in the majority of cases amounts to a breach of the criminal code or a policy condition, there is little chance that the passengers will be able to benefit from any passenger hazard insurance carried by the insured. It therefore would appear that on the average, not even one out of two persons involved in an accident recovers in full the amount of the damage caused him.

Several attempts have, nevertheless, been made to adapt or utilize the public liability principle to increase the protection to third parties on the highway, i.e., financial responsibility laws and compulsory public liability insurance plans.

SECTION 2.—FINANCIAL RESPONSIBILITY LAWS

The opponents of compulsory automobile insurance or compensation laws do not go so far as to deny the existence of a problem. They admit that the uncompensated victim of an automobile accident and his dependents are faced with a situation which requires the most serious consideration by organized society. The critics argue, however, that compulsory public liability insurance and compensation laws do not provide an

effective solution. They insist that an effective financial responsibility law, by combining safety measures and security for the victims of future accidents in which the motorist may be involved, is a sufficient answer.

Perhaps the simplest approach is to analyse the financial responsibility laws now in force in the various provinces of Canada. Secondly, they must be examined to see whether any improvement of the financial responsibility law as such is capable of producing the effect desired.

The Financial Responsibility Law of Saskatchewan is contained in Part VI of The Vehicles Act, being Chapter 98 of the Statutes of 1945. (See Appendix No. 2).

1.—ANALYSIS OF THE FINANCIAL RESPONSIBILITY LAW.

Each driving licence and certificate of registration issued to the offender, is required to be suspended:

(*a*) when a judgment, given against the holder for the negligent operation of a motor vehicle causing personal injuries or damage to property exceeding fifty dollars ($50.00) remains unsatisfied for a period of thirty (30) days after such judgment becomes final; or

(*b*) when The Highway Traffic Board is of the opinion that the holder is responsible for causing damage to the same extent as above; or

(*c*) where a conviction has been registered against the holder or when he has forfeited his bail on being charged with:

(1) racing for a wager or failing to return to the scene of the accident when personal injuries or property damage exceeding fifty dollars ($50.00) are involved; or

(2) failure to furnish required reports or any offence involving the use of a motor vehicle contrary to The Criminal Code.

The licence and certificate remains suspended until the penalty or judgment has been satisfied to the extent of five thousand dollars ($5,000.00) in respect of death or injury to one person, ten thousand dollars ($10,000.00) for death or injury to more than one person in one accident, and one thousand dollars ($1,000.00) in respect of property damage, and until the holder furnishes proof of his ability to respond in damages in respect of future accidents to the same limits, namely, five thousand dollars ($5,000.00) for death or injury to one person, ten thousand dollars ($10,000.00) for death or injury to more than one person in one accident, and one thousand dollars ($1,000.00) in respect of property damage.

Wherever the court gives leave for the judgment to be paid in instalments, the offender may have his privileges restored on furnishing proof of financial responsibility.

The same provisions are made applicable to a non-resident and the driving privileges within the province of such a person are suspended until he has complied with the conditions outlined in the preceding paragraph.

The proof to be given may take the form either of a deposit of security to the limit of at least five thousand dollars ($5,000.00) for death or injury to one person or ten thousand dollars ($10,000.00) for more than one person injured in one accident and one thousand dollars ($1,000.00) for property damage, or insurance to the same limit.

Wherever it appears that a conviction is registered against a non-owner who is employed to drive a vehicle or is a member of the owner's family and the owner gives proof, the driver may be relieved of the responsibility of so doing.

If, prior to the date of conviction or judgment, the owner or operator has furnished proof of financial responsibility voluntarily, his privilege shall not be suspended on the occurrence of such event.

Where the proof takes the form of security, such security may be cancelled and returned if:

(*a*) three years have elapsed without any written notice of a conviction or judgment being received by the Board; and

(*b*) upon receipt of a written declaration that the person making proof no longer lives in the province or has made a *bona fide* sale of all his vehicles and does not intend to drive again for a period of at least a year.

A chauffeur or operator whose licence has been suspended until such time as proof is furnished, may, nevertheless, drive the motor vehicle of an owner who has furnished proof on his own behalf but such person may not drive any other vehicle.

It should be noted at this point that Prince Edward Island legislation provides one further coercive feature which, apart from the safety responsibility law in Manitoba, is distinctive to that province. Section 98 of The Highway Traffic Act, 1936, provides as follows:

"Section 98.—(1) When a judgment is recovered in any court of competent jurisdiction within the Province against the owner or driver of a motor vehicle for damages arising out of the operation of such motor vehicle, the Prothonotary or Clerk of the Court in which such judgment is recovered shall upon application of the judgment creditor issue an order directing the sheriff of one or more counties in the Province to seize the said motor vehicle if it be found within such sheriff's bailiwick and to sell or dispose of the same to answer the damages and costs recovered by the said judgment. Such an order shall be executed by such sheriff in the manner prescribed for writs of *fieri facias* execution issued out of the Supreme Court of Judicature and shall rank as an attachment upon such motor vehicle in priority to all other executions, chattel mortgages, liens or other attachments or claims whatsoever.

"(2) Upon the verbal or written complaint of any person who alleges that his person or property has been injured by reason of a collision or impact caused by the negligent operation of a motor vehicle upon a highway, such motor vehicle may be taken into custody by the sheriff of the county in which it is found or by any peace officer. Upon the sufficient undertaking of the complainant to provide indemnity for expenses of custody, such motor vehicle shall remain in such custody as the officer so seizing the same shall prescribe until the owner or driver thereof shall deposit sufficient security in an amount not exceeding $500.00 (Five Hundred Dollars) in the form of an insurance policy or otherwise, to the satisfaction of a Judge of the Supreme Court or of the County Court or of the complainant to answer the alleged damages or shall satisfy such judge, upon a summary application after notice to the complainant, that the operation of the said motor vehicle was in no wise responsible for the said damages, or that proceedings to recover the

alleged damages are not being taken or prosecuted with due expedition. No finding or order made under the provisions of this subsection shall be pleaded or set up in any action or other proceedings to recover damages arising from the said collision or impact."

Provisions of subsection (2) are apart from the financial responsibility requirements of the law since Section 98, subsection (1) makes an execution of a judgment for damages arising out of a motor vehicle accident, a first lien on the motor vehicle of the offender and the impounding provision appears merely to be a mode of making subsection (1) more effective.

Financial responsibilty laws do provide protection to the person injured by the fault of a motorist who is in his second accident. It does not, however, provide any protection to the victim of the first accident. Any person is left free to own or drive a motor vehicle with or without insurance until he becomes the cause of damage to another. The suspension of his driving privileges cannot, of course, do much in itself to relieve the victim of an execution-proof debtor. The financial responsibility law does not render more certain the application of the general rules of law to a particular situation and in short, by its very nature, is subject to all the criticism which has been directed to the general scheme of public liability elsewhere.

2.—FINANCIAL RESPONSIBILITY LAWS AS A SAFETY MEASURE.

In his report on the Problem of Providing Compensation for victims of Motor Accidents which was prepared for the All Canada Insurance Federation in 1943, John J. Robinette says, in effect, that it is claimed that one of the most valuable attributes of financial responsibility laws is as a safety measure and safety and financial responsibility laws may all be shaped to this end.

> "The best opinion on Compulsory Insurance Legislation as for example that of the State of Massachusetts, is that the psychological effect of compelling everyone to take out insurance is the reverse of making them careful, for everybody knows that everybody else is insured, and that in case of an accident the insurance company, and not the person causing the injury, will have to pay it. The more this view is considered, the more reasonable it becomes. Drivers of heavy cars, trucks, buses, etc., are very apt to fall into this habit of mind, and so are private car owners—namely, that being insured against personal responsibility, their pocket will not be touched in consequence of any act of theirs, and, as criminal negligence can seldom be proved, they feel that they are safe from the reach of the criminal law."—John J. Robinette, p. 103, quoting Mr. Justice Hodgins, in his 1930 report to the Ontario legislature.

This proposition too closely associates the cause of accidents with a reckless mind. This Committee recognizes that there are certain drivers who are reckless and against whom society must take protective measures, but it cannot assume that the majority of those whose vehicles cause accidents, intentionally, recklessly or wantonly, place themselves in a position where such accidents are inevitable, nor can it accept the suggestion that personal financial loss is in the mind of the motorist when he drives carefully. It cannot be shown that compulsory insurance has reduced the number of accidents in Massachusetts but neither can it be shown that the number of accidents has increased since its inception.

Financial responsibility laws are so framed as to make it worth the while to insure, but at the same time to hang over the heads of reckless

drivers, the fear, that they might not be able to procure insurance, the only alternative to which is the deposit of personal bonds or money.

> "Directed primarily at the menace to person and property, from a reckless and criminal minority, the Safety Responsibility Law seeks to control this minority. To accomplish this purpose, it sets up simple legal machinery whereby the State, as the unit of local government is empowered to deprive of the use of the highways those operators who have demonstrated that they are an actual or potential menace to their fellow motorists and to the public in general."—John J. Robinette, p. 104; Mr. Justice Hodgins, p. 23.

> John J. Robinette, at page 105, states: "It will be observed from the foregoing that Mr. Justice Hodgins placed much stress on the safety factor in a financial responsibility law as opposed to the alleged lack thereof in a compulsory insurance law. It will have been seen (see Chapter on compulsory insurance and particularly heading relating to safety aspect) that this is more than an alleged lacking factor, and that compulsory insurance admittedly does not attempt to deal with the safety aspect of the problem."

The Report of the Committee on Automobile Accident Prevention, January, 1941, to the New York State Bar Association indicated that Massachusetts was not among the ten lowest accident experience states, all of which had financial responsibility laws.

> "It has been pointed out that the segregation of motorists convicted of the more serious traffic violations, and motorists who have had accidents in which they are at fault, is neither arbitrary nor without scientific basis. It has been amply demonstrated that an individual who has had one or more accidents is more likely to have another than one who has not. 'The Accident-Prone Driver', a study sponsored by the U.S. Department of Agriculture, in which nationally recognized authorities in the field of traffic safety collaborated, reveals that the total accidents suffered by the 29,531 drivers, selected as a fair random sample and whose accident records were the basis of the study, over a six-year period, fell not into groups equivalent to those which would have been established had the distribution been according to chance, but into groups indicating more than the expected number of accident-free drivers, more than the expected number of drivers who had a high accident rating, and a lesser number with an intermediate rating. Of special significance is the fact that, while accident repeaters constituted but 3.88 per cent. of all drivers, together they caused 39.8 per cent. of the fatal accidents and over 36.4 per cent. of all the reported accidents. Moreover, the figures show that drivers who were accident-free in either half of the six-year period, as compared to those who had one accident, had in the other half of the period only one-half as many accidents as those in the one-accident group, and only about one-seventh as many as those who had four accidents. It was discovered that accident repeaters tend to shorten the time between accidents as accidents accumulate. The fourth accident, for example, tends to follows the third more closely than the third followed the second." (John J. Robinette at pages 107-8.)

Robinette at 109 and 110 refers to "The Operation of Financial Responsibility Laws" by N. P. Feinsinger, Associate Professor, University of Wisconsin Law School, appearing in "Law and Contemporary Problems", October, 1936, page 519, at pages 522-23:

"The problem of segregating the bad driver might be attacked by an effective scheme of licence issuance, accident reporting, and determination of fault followed by the imposition of proper penalties. Financial responsibility laws as such contribute nothing new in these respects, although they may be enacted concurrently with or as supplementary to other laws which are so designed."

and again at 523-4, Feinsinger states:

"Much of the same criticism can be made of the claim that financial responsibility laws as such diminish the number of automobile accidents. The basis for the claim is the alleged number of bad drivers who are barred from the road through the operation of such laws. As the argument goes, the fewer bad drivers on the road, the fewer accidents. This may be conceded, and undoubtedly the process of suspension or revocation tends to that end. Unfortunately, however, the accident rate in the various States seems to bear little or no relation to the number of revocations or suspensions, indicating that other factors have greater significance. Nor does the process of suspension or revocation actually remove as many bad drivers, in absolute numbers, as might be assumed. But in any event, the question is not whether the scheme of suspension or revocation decreases accidents but whether financial responsibility laws as such have that effect, keeping in mind the fact that suspension or revocation laws antedated and exist independently of financial responsibility laws. The answer is quite disturbing, for if a driver threatened with suspension or revocation can furnish proof or pay previous damage or both, in most cases he is still permitted to drive. In other words, to the very extent that the law is effective in obtaining proof or payment it fails to remove bad drivers from the road and thus fails to prevent accidents. Therefore financial responsibility laws cannot properly be described as 'safety' measures, in the sense of promoting physical safety, except as any measure penalizing bad driving which becomes known to the public can be so described. On the contrary they might be regarded as detrimental to the public safety by creating the illusion of safety and thereby preventing the enactment of more effective laws for controlling the bad driver."

In conclusion (at page 530) Feinsinger says:

"It is inaccurate and misleading to describe financial responsibility laws as safety measures in the sense of segregating the careless driver or diminishing the number of accidents. These are not the peculiar functions of such laws and any such effect they may have, while commendable, is incidental. Their true functions are to guarantee the ability of a selected group of drivers or owners to respond in damages for future accidents, or to secure the payment of past damage, or both. In these respects, such laws are in theory an advance over the *status quo ante,* and in actual practice they accomplish their objects to some extent."

Robinette's answer for proponents of the scheme, found on pages 110-111, is as follows:

"Admittedly, in theory at least, the segregation of bad drivers could be carried out by a proper licensing system, with ample powers of suspension of driving licence, etc. This is in fact done under sections of the various Highway Traffic Acts, other than those contained in the Financial Responsibility Parts. The practical difficulty is that no suspension would be enacted which completely barred the road to the suspended driver. . . .

"Secondly, in so far as the financial responsibility provisions operate on the actual drivers affected they have a beneficial effect, but they have a wider operation on other drivers. If that effect is not as broad as it should be it is because insufficient publicity has been given — that could be easily corrected.

"Thirdly, it can scarcely be said in Canada that the financial responsibility provisions have impeded, in any way, the enactment of more stringent safety provisions in the various Highway Traffic Acts and in the Criminal Code of Canada."

The function of financial responsibility laws as a safety measure is emphasized by those who prefer the scheme in preference to compulsory insurance. They suggest that the driver who knows that his driving privileges will be suspended unless, after becoming involved in an accident, he is able to show that he is in a position to pay for the damages done, will be more careful. It is felt that even though the fullest publicity were given, the effectiveness of this provision is overstated, for human nature is such that every individual believes himself immune from remote dangers or actions. It is further argued that financial responsibility laws segregate the known bad driver, but as Feinsinger has pointed out, this desired result is far from being achieved in actuality. The accident must be reported before The Highway Traffic Board (in the case of Saskatchewan) is able to use its discretionary power, or a judgment must be registered before the mandatory provisions become effective. If the wrongdoer is insolvent or offers a settlement, it is unlikely that the injured party will advance the necessary legal costs to obtain judgment and it is very probable that the accident will not even be reported. Again, it does not affect those who are able to pay for the damage caused.

The steadily increasing incidence of accidents per vehicle during the period in which financial responsibility laws have been in force in this province, is further proof that these laws fall far short of what is desired, and have failed to provide a solution for the problem. The Department of Agriculture study in the U.S. indicated that 61% of all accidents are caused by drivers who have not been and will not be responsible for any other accidents. Only 3.88% of drivers were accident repeaters but they caused 39% of all fatal injuries and since it must be assumed that financial responsibility laws were in force in most of the states from which the sample was taken, these figures must be taken to indicate that financial responsibility laws had little safety value among these drivers.

It seems to the Committee that a blanket discretionary authority in The Highway Traffic Board to suspend and cancel would be just as effective. It is further suggested that the present system, whereby an operator's licence colour is changed from white to blue to red according to his record with always the threat of suspension by The Highway Traffic Board, is an immeasurably more effective control.

The introduction of the assigned risk plan (See Section 236 (*a*) of The Saskatchewan Insurance Act, as enacted by Chapter 23 of the Statutes of Saskatchewan, 1946), has impeded the functioning of the financial responsibility laws as a safety factor. No law operates in a vacuum. Its efficiency depends upon the nature, content and administration of other laws touching upon the same matter and upon the consistency of the entire body of the law. Under the assigned risk plan, the insurance companies carrying on the business of property damage and public liability automobile insurance subscribed to a pool. The pool is administered by a committee and its object is to provide insurance

for persons required to furnish proof of financial responsibility or, in other words, to provide insurance for bad risks. Upon receiving an application from any person to be brought under the plan, the manager of the pool assigns the risk to one of the subscribing companies. The subscribers are bound together in the pool by agreement. The conditions under which any application will be accepted by the governing committee are as follows:

(*a*) The applicant must have been rejected by three insurers within the province within sixty days of the date of application to have the risk assigned.

(*b*) He is disqualified if:

(1) he has been convicted or forfeited his bail more than once in respect of a specified list of offences;

(2) any person who is suffering from a major mental or physical defect and might be expected to drive his automobile;

(3) he has illegally registered an automobile within the province within the 12-month period preceding the application;

(4) he has failed to pay the premium under any policy of public liability or property damage insurance contracted during the 12-month period preceding the application;

(5) a previous application to the pool has been rejected or a policy written as an assigned risk has been cancelled for cause within the 12 months preceding application.

The committee may authorize the cancellation of the policy upon receipt of notice from the subscriber to the effect that the insured has ceased to be a fit subject of insurance, has failed to observe reasonable safety precautions or that special circumstances warrant cancellation. The policy may be cancelled for non-payment of premium.

The assigned risk plan restricts the underwriter's discretion in the assessment of surcharged premiums substituting therefore fixed surcharged rates set by the committee. It hampers the underwriter in selecting risks. Since it cannot be expected that a company will "break even" on this type of business, it will tend to throw some of the burden of losses sustained by these bad risks on to the shoulders of the average motorist and will be reflected in the premiums which he is called upon to pay. In effect, it means that the person who is required to furnish proof of financial responsibility will be able to procure insurance provided that he has not been guilty of flagrant disregard of the penal traffic law. It tends to keep on the road the bad driver which financial responsibility laws purport to remove from the highway.

3.—FINANCIAL RESPONSIBILITY LAWS AS A COMPENSATION MEASURE.

As a means of insuring to injured persons payment of damages, Robinette, at page 111, says:

> "It is argued that these laws do, to a very large extent, assist in assuring to injured parties that they will be paid damages sustained. These laws are said to operate in this respect in three ways:
>
> (*a*) In so far as bad drivers are segregated and have furnished proof they are financially responsible, at least to the extent of the proof filed, if not otherwise so.

(*b*) It has a psychological effect on drivers. That is to say, persons are induced voluntarily to take insurance because of the danger of driving without it.

(*c*) In the case of a person who has an accident and is found liable in damages he cannot drive again until he pays the judgment or arranges to do so by instalments, and has furnished proof. This induces those who are dependent upon operating a motor vehicle for a livelihood or who otherwise desire to do so to meet any claim for damages."

Quoting from the article above referred to by N. P. Feinsinger, (pages 524-526), Robinette, at pages 111-112, states:

"Granting that the threat of suspension or revocation causes some bad drivers to insure, the two questions which present themselves are: (1) whether the law by its terms is designed to reach a broad enough group of drivers; (2) whether the law as administered actually reaches those whom it was designed to affect."

The proponents of the plan prefer it because it does not affect the majority of drivers. The efficacy of the plan depends upon reporting and pursuance of judgment. Many accidents are not reported. Few injured persons will advance legal costs to pursue a judgment-proof wrongdoer and many bad settlements will be made. Robinette, at page 112, quoting Feinsinger at page 526, states:

"The Connecticut commissioner feels that the change from an accident to conviction basis has seriously affected the operation of its law; the statistics support him, and strengthen the assertion that the necessity of obtaining a formal conviction or judgment as a condition to requiring proof or payment is a serious defect in the usual law as a compensation measure. Connecticut and Pennsylvania provide for proof where a person is shown to have an accident record. Such a provision seems to have a greater administrative efficacy than one based entirely on fault in a particular accident. In 1934-1935, Pennsylvania required proof in 829 cases, because of an accident record. Connecticut has required proof in about 4,000 cases anually on a similar basis."

Feinsinger points out that the incentive to make easy settlement of claims in case of insolvent or uninsured drivers deprives the state of an accurate report of accidents, and allows the irresponsible driver to remain on the highway until the day of the big collision.

"But the characteristic which distinguishes it from compulsory insurance, namely, its operation contingent upon the obtaining of a judgment, will prevent it from ever becoming as effective as compulsory insurance in the guaranteeing of compensation for automobile injuries.

"Financial responsibility and damage judgment laws are sometimes supported as tending to increase liability insurance on all cars, whether covered by the Act or not. If this is so, it is mainly because the publicity attendant on the Law has made owners or drivers 'insurance conscious'."

In conclusion, at page 530, Feinsinger says:

"They (financial responsibility laws) have by no means accomplished all that was hoped by their sponsors. Although they have

caused some bad drivers to insure and have forced the payment of some judgments, they do not in terms apply to a broad enough group of drivers to fit their own underlying theory, nor do they reach in practice a large proportion of persons to whom they do apply in terms. These inadequacies may be due partly to lack of familiarity with the law on the part of administrators as well as the public, or to defects which experience of legislation may remedy. At their best, however, financial responsibility laws cannot possibly approach compulsory insurance in the fulfilment of the function of either payment or insurance. Whatever may be decided as to the relative merits of the two schemes on the whole, it is necessary for a fair comparison that not only the theoretical but the administrative efficacy of both be understood."

Robinette, at page 114, refers to the report of the Committee on Automobile Accident Prevention presented to the New York State Bar Association in 1941 in which the following advantages for policies voluntarily secured under a Financial Responsibility scheme are claimed:

1. It can apply to the non-resident or foreigner.
2. The policy voluntarily secured covers accidents involving collisions with fixed objects, railroad trains, street cars, horse-drawn vehicles, bicycles or from obstructions or defects in the road and non-collision accidents where only the automobile occupants are injured.
3. Such a policy covers accidents occurring outside the state.
4. It covers property damage and guest occupants.
5. Generally speaking it will cover risks not covered by compulsory insurance.

Argument No. (2) is somewhat misleading. It infers that the motorist himself is protected in collisions of the type that is referred to, which, of course, is hardly correct. If the Railroad Company or the owner of a fixed object or the highway authority negligently causes damage to a motorist or his guests, they have an action against the author of the wrong and in order to protect himself against such liability, the potential wrongdoer would enter into a contract of liability insurance of a kind different from a motor vehicle liability policy to which the financial responsibility argument relates. The motor vehicle liability policy would protect the motorist against any liability which might be imposed upon him as a result of his negligently causing damage to the highway, a fixed object or a railway train but to claim this as an argument in favour of the voluntary motor vehicle liability policy is rather thin. It is actually comparing the advantages of property damage and public liability insurances and, of course, there is nothing inconsistent between compulsory and public liability insurance and voluntary property damage insurance operating co-ordinately. Again, the protection offered to guest occupants is limited. Liability incurred to such persons is not covered by the standard policy, but requires a passenger hazard endorsement. In most Canadian jurisdictions, a gratuitous passenger only has a cause of action against his host on the proof of gross negligence. Gross negligence is tantamount to criminal negligence—in the great majority of cases permitting the insurance company to avoid the policy—and therefore giving very slight protection to the guest occupant.

The New Hampshire law attempts to overcome the usual weakness in financial responsibility laws, which is that they only apply after the obtaining of a judgment and the failure of the judgment debtor to pay same, or in the case of conviction. Robinette at page 116 reports:

"The New Hampshire law corrects this situation by dealing with the motorist at the time the accident occurs. That law provides that immediately upon the happening of an accident, the commissioner shall forthwith suspend the licences of the motorist involved unless he has previously furnished, or immediately thereafter furnishes, security for that accident and proof of financial responsibility for future accidents. In plain words, this means that if a man is not insured, he must be directed by the commissioner to file security for the damages in that accident, and that his failure to produce such security or produce a release from those injured will result in the suspension of his licence immediately."

As a compensation measure, financial responsibility laws fall short. They guarantee no compensation whatsoever to the victims of the 96% of drivers who are involved only in one accident. The proponents of the scheme argue that it does provide some security to the first victim since it induces motorists to insure voluntarily. Reason might well indicate that this should be the result but the practical operation of the law has obviously failed to do much in this respect, for as pointed out elsewhere, less than 12% of Saskatchewan motor vehicles, including those which are compelled to insure, carry public liability insurance at the present.

Highway traffic officials in this province estimate that not more than five persons were required to show proof of financial responsibility during the last licence year. This indicates either that rights of action are not being pursued through to judgment, that in those accidents in which extensive damage is done, only financially responsible persons are liable, or that convictions and judgments are not being registered with the Board. Whatever the reason, it is clear that they have not contributed in any degree to increase the security of the victim of an accident.

This Committee can find very little in financial responsibility law which, if carried to its ultimate development, can solve the essential problem. Since, however, it is unable in the present study to bring forward the solution to the problem of compensation for property damage caused by motor vehicle accidents, it believes that no harm can be done if financial responsibility laws are retained in so far as they relate to property damage. Because of the plan which it has evolved for the compensation of persons suffering bodily injuries, a plan which overcomes objections to public liability insurance in general and financial responsibility laws in particular, the Committee can find no reason why they should be retained in so far as these laws affect those involved in accidents causing personal injury.

4.—MANITOBA LEGISLATION.

Safety Responsibility and Compensation to the Unsatisfied Judgment Creditor.

The measures taken in Manitoba to deal with the automobile accident problem are contained in the amendment to Highway Traffc Act, Cap. 23, Statutes of Manitoba, 1945.

The provisions of the Manitoba Act fall into two general groups:
1. Safety Responsibility.

The relevant provisions are incorporated into the Highway Traffic Law by section 12 of the amending Act.

Whenever, in an action for damages resulting from bodily injuries or death or property damage exceeding Twenty-Five Dollars ($25.00) occasioned by, or arising out of, the ownership, maintenance, operation or use of a motor vehicle, a judgment remains unsettled for a period of thirty days, the registrar is required to suspend or cancel the driver's licence and the owner's certificate of registration.

Such a person is thus kept off the highways of the province until he has satisfied the judgment to the extent of Five Thousand Dollars ($5,000) for personal injuries to one person, $10,000 for injuries to more than one person, or $1,000 for damage to property and until he furnishes proof of financial responsibility.

Similar provision for suspension and cancellation is made whenever the registrar receives written notice that a vehicle was directly or indirectly involved in an accident occasioning bodily injury, death or property damage over Twenty-Five Dollars ($25.00) unless the registrar is satisfied that the car was at that time stolen from the owner, that the only damage was to the person or property of the driver or owner, that he possesses a motor vehicle liability or financial responsibility card or that the judgment is satisfied to the extent indicated above and proof of financial responsibility given.

The driver and owner whose licence has been suspended under the foregoing provision is entitled to reinstatement without further proof of financial responsibility if:

(*a*) One year has elapsed since the date of cancellation; and

(*b*) 1. The person under suspension has not been adjudged liable for the damages or admitted his liability therefore; or

2. Has not been named defendant in an action arising out of the accident; and

(*c*) is not required by any other provision of The Highway Traffic Act to furnish further proof of financial responsibility.

Further provision for suspension is made where the driver or owner of a vehicle has been convicted of certain offences or has forfeited his bail having been charged with one of such offences. The suspension remains in force until the penalty is satisfied and proof of financial responsibility given.

In addition to the above specific grounds, the registrar may suspend or cancel a licence or registration certificate for breach of the Act or for other reasonable cause.

Provision is further made for the impounding by a peace officer of any car which is involved, directly or indirectly, in any accident occasioning bodily injuries or property damage exceeding Twenty-Five Dollars ($25.00) unless or until the owner or driver furnishes satisfactory proof of subsisting insurance, proof that the car was stolen or proof that injuries were sustained only to the person and property of the owner or driver.

Again such a car may be released from impoundment upon the owner giving proof of satisfaction of judgment to the extent indicated in paragraph two and proof of financial responsibility.

2. Compensation to Unsatisfied Judgment Creditor.

The Lieutenant Governor in Council is authorized to require each owner of each motor vehicle at the time of registration to pay an addi-

tional fee not exceeding One Dollar ($1.00) for the creation of a fund of not more than $175,000 and not less than $100,000.

Section 128 M of the Manitoba Act provides as follows:

> "WHERE any person recovers in any court in the province a judgment for an amount exceeding One Hundred Dollars ($100.00) in an action for damages resulting from bodily injuries to, or the death of, any person occasioned by, or arising out of, the ownership, maintenance, operation, or use, of a motor vehicle by the judgment debtor, upon the determination of all proceedings including appeals and upon notice to the Provincial Treasurer, such judgment creditor may, in accordance with "The King's Bench Rules", apply by way of originating notice to a judge of the Court of King's Bench for an order directing payment of the judgment out of the fund as hereinbefore provided."

The Act then goes on to provide for the making of an order by a judge on being satisfied that the judgment creditor has taken all steps permitted by law for the recovery of the judgment and that such judgment remains in whole or in part unsatisfied.

The unsatisfied judgment fund is not unique to Manitoba. Attention is drawn to provisions of the Prince Edward Island Highway Traffic Act, 1936, as amended by Chapter 17, Statutes of 1937, and by Chapter 17, Statutes of 1945. Part of that Act contains measures for the establishment of such a fund by methods similar to those adopted in Manitoba.

> "Now what does the new legislation offer in place of compulsory insurance? The government believes that this measure will be conducive both to safety on the highways and to the recovery of compensation for injuries suffered and damage caused. It has a dual purpose: FIRST—Safety; SECOND—Better opportunity to recover damage for loss sustained.
>
> "It is based in large measure on legislation first enacted in New Hampshire and adopted with some changes in the State of New York. The underlying principle is that the reckless driver who is unable or unwilling to compensate persons whom he injures finds himself in difficulties and the use of the highway is denied to him forever. The legislation makes it decidedly advantageous for a person to carry public liability and property damage insurance, and very inconvenient for him if he does not carry it in the event he is involved in an accident. On the other hand, a person who does not use his motor car a great deal, and is careful enough, and fortunate enough, to avoid accidents may decide not to insure. Because of this many farmers in the Province may so decide. This course is left open but neverthless the new law creates a strong incentive to every one to insure."—Death and Damage on the Highway: A Broadcast by The Honourable James O. McLenaghen, K.C., Attorney-General of Manitoba, over the CBC Network from Winnipeg, Manitoba, Wednesday, April 11th, 1945, at pages 4-5.

The Manitoba scheme does provide a guarantee of some compensation to unsatisfied judgment creditors but it does not overcome the basic weaknesses common to all systems of public liability insurance which are discussed elsewhere. It assumes to overcome most of the faults which other investigators have reported to find in compulsory systems of insurance. The report above quoted lists these as follows:

"1. Compulsory insurance is definitely not a safety measure;

2. Compulsory insurance leads to an increase in the cost of insurance;

3. In Massachusetts compulsory insurance has led to the government becoming involved in rate fixing;

4. Compulsory insurance has increased the frequency of fraudulent claims;

5. By taking away underwriting judgment, compulsory insurance puts on the road drivers who should be off."—Death and Damage on the Highway, Supra.

There is, of course, no reason why safety legislation cannot be enacted and a Public Safety Program undertaken in conjunction with a compulsory insurance scheme. Increased rates have not been proven to be an effect of compulsory insurance.

> "While rates have shown an increase of over 50 per cent. since the inception of the Act, this increase is not necessarily attributable to the Act. During the period 1927 to 1935 while rates were increasing 51.5 per cent. in Massachusetts, they increased 27.6 per cent. in the remainder of the country. But in individual states they increased by widely varying percentages: 1.6 in New York; 79.2 in California; 7.2 in Ohio; 71.7 in Virginia; 21.6 in Pennsylvania; 34.4 in Connecticut, and 61.5 in New Jersey."—*Compulsory Motor Vehicle Liability Insurance in Massachusetts,* by Ralph H. Blanchard, *Law and Contemporary Problems,* Volume 3, No. 4, 1936, page 537 at 545-6.

And as a matter of fact, the introduction of the scheme which the Committee now proposes should and must result in lower rates for public liability insurance which will become excess insurance. Rate fixing is a problem closely related to a plan bound up with private insurers and is not expected to lead to any difficulties where the plan is a state undertaking, exclusively.

The fraudulent claims racket became a part of the American way of life very shortly after the automobile made its appearance on the highway. Claim consciousness was dependent neither for its development nor growth upon the Massachusetts Compulsory Insurance Law. (See *The Liability Claim Racket* by Robert Monaghan, *Law and Contemporary Problems,* page 491.) "Fraud has been present, but whether it has been on a more extensive scale in proportion to the insurance available than in other states is problematical."—*Compulsory Motor Vehicle Liability Insurance in Massachusetts,* supra., pages 548-9.

It is true that Compulsory Insurance may, in effect, limit the range within which the underwriter is able to exercise his discretion but the plan which is presently proposed will permit the imposition of the surcharge premium where the insurer believes that the presence of any particular individual on the highway disproportionately increases the danger to the public. On the other hand, it is felt that the licensing authority will exercise prudence in issuing licences, and if that authority holds a man out as being qualified to operate a vehicle, there is no reason why that man should not be insurable.

SECTION 3.—SYSTEMS OF COMPULSORY LIABILITY INSURANCE

1.—GREAT BRITAIN.

Although preceded by various types of social insurance, some dating back as far as 1883 in Germany, it was not until 1930, following a report made by a Royal Commission to the British Parliament, that any form of compulsory automobile insurance was adopted for protection of the victims of automobile accidents.

The law which provides for compulsory insurance is found in Part II of The Consolidated Road Traffic Act, 1930. The introduction of this Act was an effort to consolidate and revise some of the old outmoded traffic regulations which had in some cases been in effect since 1896.

Under Section 35 of the Act, every motorist must carry a Public Liability Insurance policy or he may, if he so desires, take the other alternative afforded and deposit with the Accountant General of the Supreme Court, securities to a specified amount.

Certain exemptions are provided under Section 35, namely: Those people, or groups of people, who are exempted from the above regulations by virtue of their office or occupation. Members of the police or any local authorities are exempt. Tram cars, trolley cars or invalid carriages are also exempt.

Section 38 of the Act purports to prevent the insured from setting up as a defence against third party claims arising out of personal injuries, resulting directly from the use of the vehicle on the road, a breach of condition by the insured after the happening of the accident.

If the driver or owner of a vehicle wishes to deposit securities in lieu of insurance, he may, provided that the securities meet certain minimum requirements. Such security must be given either by an authorized insurer or by some body of persons which carries on, in the United Kingdom, the business of giving securities.

Section 39 of the Act, empowers the Minister to make regulations requiring the furnishing of evidence that a certificate of insurance will be in force at the time of taking out the licence as a condition precedent to the issue of such licence. There is no provision authorizing any regulation requiring that the contract of insurance should be co-terminus with or should have an expiry date which would insure coverage for the particular licence year.

> "Provided the policy is in force when the licence takes effect, it is immaterial that the term of the policy is not concurrent with that of the licence. The requirement of s. 11 of the Regulations is thus fulfilled by production of a certificate which expires shortly afterwards. Any evasion which arises from this fact is, presumably, considered to be covered by the terms of s. 40 of The Road Traffic Act, 1930 . . ."—*Road Users' Rights, Liabilities and Insurance*, Hector Hughes, K.C., at page 378.

Section 40 makes it an offence for any person: either

(*a*) not to produce a certificate of insurance when requested by a police officer so to do; or

(*b*) not to report any accident causing personal injury to another and to fail to produce a certificate within 24 hours of such accident:

provided that in either case, such person shall not be convicted of an offence if he produces his certificate at a designated police station within 5 days.

In addition to The Road Traffic Act, Parliament introduced in 1930, the Third Parties (Rights against Insurers) Act, 1930. This latter Act permitted the injured third party, in the event of the insured failing to pay a claim made against him, to recover directly from the insurance company. However, the validity of this right depended upon the fact that the insured's policy of insurance was still in force and had not been violated by a breach of condition, misrepresentation, etc., on the part of the insured, which resulted in the cancellation of the policy of insurance.

It soon developed that despite the legislation enacted for the protection of third parties, the insurance companies were still able to defeat the protection which this legislation was designed to give to injured third parties. The Road Traffic Act, 1934 (24 and 25, Geo. V., C. 50) was designed to overcome this defect.

Many of these amendments, with certain exceptions, came as a more carefully defined duty imposed on insurers to satisfy judgments which were obtained against the insured under the provisions of the Act.

Section 10 provides that after a certificate of insurance has been delivered under the Act, any judgment in respect of any such liability as is required to be covered by a policy obtained against any person insured by the policy, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment, any sum payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest or judgments.

Section, 2, says:

"No sum shall be payable by an insurer under the foregoing provisions of this section—

(*a*) in respect of any judgment, unless before or within seven days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or

(*b*) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or

(*c*) in connection with any liability, if before the happening of the event which was the cause of the death or bodily injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either—

(*i*) before the happening of the said event the certificate was surrendered to the insurer, or the person to whom the certificate was delivered made a statutory declaration stating that the certificate had been lost or destroyed, or

(*ii*) after the happening of the said event, but before the expiration of a period fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom the certificate was delivered made such a statutory declaration as aforesaid, or

(*iii*) either before or after the happening of the said event, but within the said period of fourteen days, the insurer has commenced proceedings under this Part of this Act in respect of the failure to surrender the certificate."

The insurer is given the right to recover any amounts for which he would, apart from the provisions of this section, become liable, from the insured, and which because of these provisions he has had to pay. (See Section 235, Saskatchewan Insurance Act.)

Where a certificate of insurance has been delivered under subsection 5 of the Act to a person with whom a policy has been effected, the happening, in relation to any person insured by the policy, of any such event as bankruptcy, etc., shall not affect any such liability of that person as is required to be covered by a policy under the Act. However, nothing in this section affects the rights conferred by the Act on the person by whom the liability is incurred.

A further section of the amendments is designed to prevent the insurer from avoiding payment on grounds that the scope of his contract is limited by any of the following:

(*a*) The age, physical or mental condition of persons driving the vehicle;

(*b*) The condition of the vehicle;

(*c*) The number of persons that the vehicle carries;

(*d*) The weight or physical characteristics of the goods that the vehicle carries;

(*e*) The times at which or the areas within which the vehicle is used;

(*f*) The horse power or value of the vehicle;

(*g*) The carrying on the vehicle of any particular apparatus, or identification other than any means of identification required to be carried by or under The Roads Act of 1920.

Provided that nothing in this section shall require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this section shall be recoverable by the insurer from that person.

Upon the cancellation of the policy of insurance or within seven days of such cancellation, the insured shall surrender to the insurer the certificate of insurance or take an oath to the effect the same has been lost by the insured.

Where medical or surgical treatment or examination is immediately required as a result of bodily injury to any person caused by, or arising out of, the use of a motor vehicle on a road, and the treatment or examination so required is given by a registered medical practitioner, the person who was using the vehicle at the time of the event out of which the bodily injury arises, shall, on a claim being made in accordance with the provisions of the Act, pay to the practitioner by whom it is first effected, a stated sum. In addition, there is a provision for payment where such treatment is given in a hospital.

A claim for a payment under the Act may be made at the time when the emergency treatment is effected, by oral request to the person who was using the vehicle, and if not so made must be made by request in writing, served on him within seven days from the day on which the emergency treatment was effected.

A further provision of the Act gives the claimant a right to obtain from the police any information such as identification, address of driver or owner, and such additional information as he may require in order to make a claim successful.

(*a*) Criticisms of British Legislation.

It might be pointed out that the Committee recognizes, despite the following criticisms of the different types of legislation, each is in many cases a progressive step toward the eventual solution and that each has in some measure contributed to the foundation upon which the present proposals were formulated.

In considering the British legislation in the light of how successfully it meets the traffic accident problem, the following weaknesses are observed: English legislation does not modify the pre-existing liability laws. It is, in fact, an attempt to lend an air of reality to the protection of the common law by ensuring that every motorist is able to respond in damages and to maximize the protection to third parties, because any such third person cannot properly be identified with the conduct of the insured where such conduct amounts to a breach of contract. The statutory protection given to third parties is no more than is provided by The Uniform Insurance Act presently in force in the provinces of Canada. Since the aim of the legislation is to guarantee to the successful plaintiff the recovery of his judgment, it is quite reasonable that the municipal institutions, police authorities, etc., which are usually financially capable of responding in damages, should be exempt from the operation of the Act.

Many of the weaknesses which the British legislation discloses spring from the reluctance of Parliament to deviate from orthodox practice. Like our own voluntary insurance laws, no protection is offered to the gratuitous passenger whose driver is negligent. Under the standard contract, there is no protection given to the victim of a hit-and-run driver, and unlike our own law in Saskatchewan, the onus of proving negligence is always with the plaintiff. (Vehicles Act, 1945, Chapter 98, Section 142.)

A further flaw in the British legislation is shown by the fact that in one year (1936), there were 13,410 prosecutions for failure to insure against third party risks. In studying this figure, we might well conclude that only half the cases were reported hence the actual number of non-insured drivers might well be doubled. Since the whole object of the legislation is to ensure recovery by victims of accidents, the large number of non-insured motorists proves that the Act has failed to achieve its first objective.

As with voluntary insurance, the British system makes no provision for the recovery of indemnity from the insurance company by a third party who is injured by the automobile of an insured owner, operated by a person driving without consent.

The effect of this compulsory insurance with private companies has been to increase the numbers of insurance companies and according to

an article appearing in the British Tribune:—"Nevertheless, the number of fraudulent insurance companies stimulated by third party insurance to fraudulent enterprises was a major scandal."

Recommendations of the British Board of Trade Committee Studying British Insurance.

Shortly after the enactment of the amendments to the British legislation, the Board of Trade set up a Committee to study improvements to the existing legislation regarding insurance against third party risks. The recommendations of that Committee may be summed up as follows: A central fund should be established on a similar basis to the one now in use in Manitoba. The conditions of its use and the method of establishing it are also closely related.

The Board of Trade Committee further made a number of recommendations in regards to the right of insurers to avoid policies. The following are quoted as examples, listed in Robinette's Report at page 26.

> "(*a*) No conditions in a policy should be effective against an injured third party except certain ones as regards use of the motor vehicle and as regards the driving of it.
>
> (*b*) An insurer should not be entitled to repudiate liability to the detriment of an injured third party on the ground of a breach of any of the permitted conditions without obtaining a declaration by the Court that such breach has been established.
>
> (*c*) In the event of such a declaration being obtained the injured third party should be able to recover from the central fund the amount of any judgment given in his favour against the offending motorist. The central fund should have the right of recovering any payments it may have been called upon to make.
>
> (*d*) The right of the insurer to avoid the contract of insurance on the ground of misrepresentation or non-disclosure after obtaining a declaration from the Court should be retained.
>
> (*e*) In the event of a policy being thus avoided as against an injured third party, he should have a right to recover from the central fund the amount of any judgment given in his favour against the offending motorist. The central fund should have the right of recovering any payment which it may have been called upon to make from the person liable for the injury."

Recognizing the fault of the British legislation which makes no provision for recovery of an injured third party involved in an accident by a hit-and-run driver, the Committee could make no recommendation to correct this. They felt that due to the danger of fraudulent claims, it would be unwise to allow judgment debtors the privilege of recovering under the above circumstances from the central fund.

It might be noted that the British Committee's recommendations have not been to date afforded any attention in British law.

2.—NEW ZEALAND.

Motor Vehicle Third Party Insurance Act—1928

This Act in many ways is superior to the Act passed two years later in Britain. It requires every owner to insure to certain limits against

liability in respect of injury to the third party. Under the Act, it is a point of importance to note that at this early date there was contained in this legislation, a clause which provided insurance to follow the motor vehicle whether it was driven with the authority of the owner or not.

Similar to legislation passed at a later date in other countries there is a clause which requires the insurance company, before accepting insurance business in compliance with the Act, to notify the Registrar.

New Zealand was the first country to make the payment of the insurance premium a condition precedent to the obtaining of registration plates. In this way the problem of uninsured drivers is largely eliminated.

The insured, upon payment of the required premium to the Registrar, nominates his insurer and the contract of his insurance is completed upon this premium payment and subsequent nomination.

New Zealand incorporates into The Insurance Act (see subsection 1 of Section 7), another outstanding feature, in so far as the contract of insurance in respect of any motor vehicle "shall inure in favour of the owner for the time being, notwithstanding any change in the ownership of such motor vehicle."

The Insurance Companies are given the right to take action or other remedy against the owner who has made a false statement for the purpose of effecting an insurance contract. In addition, there is a penalty in the form of a fine of £100 upon summary conviction of such offence.

Similar to other legislation, the owner is required to give his insurance company prompt notice of the accident and of any claims arising therefrom. Should the insured become involved in any action or make settlement without the consent of his insurer, the insurer may recover from him any sum which it is required to pay to an injured third party.

Passengers who are carried for hire are prevented under the Act from contracting themselves out of benefits which would accrue to them as a result of death or bodily injury in an accident. Subsections 2 and 3 of Section 6 of the 1928 Act provide that the limit of liability under a contract shall be £2,000 for one passenger in one accident and £20,000 for all passengers in one accident but otherwise liability to indemnify under a contract shall be unlimited in amount.

The Insurance Companies are given the right to apply for the cancellation of any driver's licence on the grounds that the driver is endangering public safety.

Similar to Australian legislation, the Act sets out the application of moneys received by way of premiums by the Deputy Registrar. Here too, as under the Australian legislation, there are certain deductions made in respect of administration expenses.

The rates and premiums are fixed by Order-in-Council together with the settling of such matters as forms for nomination of Insurance Companies, forms of notices and the prescribing of penalties for breach of regulations.

Penalties, in the form of sur-charged premiums are prescribed by regulation for different classes of motor vehicles and the use in which such motor vehicles are employed. If the owner or driver of a motor vehicle fails to give notice of his intention to use the motor vehicle beyond the limits set out in his present policy, he is liable to a fine of £10 for every day he so uses the vehicle. The Insurance Company,

however, is not given the right to avoid its contract on these grounds but may recover from the owner or driver any amounts which it is required to pay in respect of the owner's or driver's liability in an accident while so operating his vehicle in contravention of the contract of insurance.

This Act, insofar as it requires the payment of insurance premiums by or on behalf of the owners of motor vehicles, shall bind the Crown.

3.—WESTERN AUSTRALIA.

In the year 1943, the state of Western Australia adopted a form of compulsory liability insurance. This was contained in The Traffic Act, 1919 to 1941.

Similar to the British legislation, and legislation in effect in Victoria and other Australian States, the Act was designed with the idea of protecting third parties involved in a motor accident. The Act requires the owner of a motor vehicle to insure against legal liability which may be imposed upon him or any person driving his vehicle for death or personal injury arising out of the operation of such vehicle.

No person may use or cause or permit any person to use a motor vehicle on a road unless there is in force in relation to such motor vehicle a policy of insurance complying with the Act. Any person convicted of an offence against these provisions becomes disqualified from holding or obtaining a driver's licence or licence in respect of a motor vehicle for a period of 12 months from the date of application.

Under the Act, the owner of a motor vehicle shall upon being requested so to do by an inspector appointed under The Traffic Act or any member of the police force, furnish evidence that there is in force in respect to every motor vehicle owned by him a policy of insurance complying with the Act. The owner shall be deemed to have complied with the terms of this Act if he produces such evidence in a police station within five days of being requested to do so.

Any person or association of persons carrying on the business of insurance in the State, who is willing to enter into contracts of insurance complying with the Act may apply to the Minister to be approved as insurer.

The insurance contract does not indemnify the insured against loss or for a liability incurred by him as the result of the death of his wife or husband, child, parent or grandchild nor anyone in his employment. The liability to indemnify is restricted to £2,000 in respect of injuries to one passenger in one accident and to £20,000 in respect of injuries to all passengers in one accident (including costs in both cases). Otherwise the liability to indemnify appears to be unlimited.

Motor Vehicle (Third Party Insurance) Act of 1943.

Under Section 7 of the Act, it is provided that where an insured person is dead or cannot be found, the claimant may proceed against the insurance company. Provision is also made for the victims of hit-and-run drivers. This is accomplished by authorizing the Treasurer of the State to appoint a nominal defendant. The amount of any judgment is then paid by all group insurers on a *pro rata* basis according to the previous year's premium income.

Section 12 sets out certain sums which medical practitioners or registered nurses are entitled to recover from the insurers for any emergency treatment which is found necessary for any such person to render following an accident.

Motor Vehicle Third Party Insurance Pool—Western Australia.

For the purpose of sharing the burden of bad risks, insurance companies of Western Australia, in July, 1944, formed what they called an "Unacceptable Risks Pool". Any insurer was entitled to membership in the Pool if he was an approved insurer under The Motor Vehicle Act of 1943. It is interesting to note that listed as approved insurers was the State Government Insurance Office.

The rules which governed membership in this "Unacceptable Risks Pool" include one that permits no member to withdraw from the Pool during the business year of the Pool. The subscriber companies wishing to withdraw must give the Secretary notice of intention at least three calendar months before the expiration of the current Pool.

The Pool is governed by a special Committee consisting of five representatives of subscribers, one of whom shall be a representative of the State Government Insurance Office. Among the powers and duties of the Committee, are:

(*a*) To receive and disperse all money in connection with the Pool;

(*b*) Take complete control of any claim arising under a Pool policy accepted by the Pool; and

(*c*) Collect from subscribers any information or evidence as may be considered necessary in connection with insurance or claims required by the Pool.

A subscriber desiring to pool a risk, may submit particulars to the Secretary together with reasons for desiring to pool the particular risk. The final decision as to whether or not the risk should be pooled rests with the special Committee.

Certain risks are compulsory poolable risks, such as public service vehicles, all risks of which there is evidence, although accepted by a subscriber, that the same has been declined by another approved insurer.

Method of Participation of Pool Members.

Profits and losses are dispersed on a percentage participation basis. A single subscriber receives or pays to the Pool in the proportion which its gross premium income from insurance for one year bears to the total of such gross premium income of all subscribers during the same year. For the purposes of determining the amounts of individual participation of subscribers, it is the duty of each subscriber within seven days after determination of each Pool, to furnish the Secretary with a return of its gross premium received in respect of all insurances effected under The Motor Vehicle Third Party Insurance Act.

A claim may be settled by an individual subscriber if the amount is for less than £100, any other claims will be dealt with by the Pool subject to the direction and control of a special Committee. Where any subscriber pays a claim involving an amount in excess of £250, he may, by application to the special Committee and on proof of payment, obtain immediate refund.

4.—SOUTH AUSTRALIA.

Compulsory public liability insurance in South Australia has been effected by The Road Traffic Act (1934-1943). The provisions of Part 2(*a*) of the Act strongly resemble corresponding sections in the English legislation and make it an offence for any person to drive an automobile or to permit another to drive an automobile on a road unless there is in force in respect to that automobile, a policy of insurance. The Act then requires the production by the motorist upon demand, proof that he or the owner is insured. This section then sets out the liability of the insurer together with certain requirements in respect to policies.

The minimum coverage limits for paying passengers are £2,000 for a single claim and £20,000 for one accident inclusive of costs. No insurance is required against loss arising through claims of the servant, relative or gratuitous passenger in a vehicle of the insured.

The Act provides for the policy of insurance to follow the motor car in the event of a sale, notwithstanding any agreement to the contrary. Thus, a policy of insurance issued under this Act "shall not be cancelled or otherwise terminated solely by reason of a change of ownership of the vehicle in relation to which the policy was issued; but shall, subject to any lawful termination thereof, enure in favour of every person who during the period for which the policy was granted or renewed becomes an owner for the time being of the vehicle . . ." The coverage of the policy is extended to include "every person who during that period drives that vehicle whether with or without the consent of the owner".

Following British legislation, there is a section in this Act which provides that in the event that a judgment remains unsatisfied, the judgment creditor may sue the insurance company directly. Provision is also made for recovery against the insurance company in the event that the judgment debtor is dead or cannot be found and provision is further made permitting suit to be brought against a nominal defendant on behalf of the victim of a hit-and-run driver.

The Act further prevents the insurer from avoiding the policy on the grounds that the policy was obtained by a mis-statement or non-disclosure, whether fraudulent, material or otherwise, or on the ground of breach of condition, etc.

Provisions of the Act parallel the British legislation in such matters as the duties of the owner or the insurer, powers of the insurer to deal with claims against the insured, and the section dealing with the emergency treatment of persons who are injured in an automobile accident.

Provisions in the Road Traffic Act of South Australia dealing with hospital treatment, are similar in some respects to the British and Victoria legislation, but different in others. "Where any payment is made . . . by an insurer, under or in consequence of a contract of insurance . . . in respect of the death of or bodily injury to any person caused by or arising out of the use of a motor vehicle and the person who has so died or been injured received treatment at a hospital" the insurer is required to pay for such treatment provided that the hospital notifies the insurer within one month of the accident. The amount payable by the insurer to the hospital in respect of any such bodily injury shall not exceed £50 for each person so treated as an in-patient or £5 for each person so treated as an out-patient, provided that in either case the amount payable to the hospital shall not exceed one-fifth of the total amount paid by the insurer as indemnity for the loss resulting from such injury. If there are two

hospitals involved in the treatment of the patient, the total amount shall not exceed the above specified amounts paid in proportion to each hospital. This limitation of amounts paid to hospitals is a deviation from the British legislation.

Under South Australian legislation, every action brought about by the owner or driver of the motor vehicle for damages in respect of death of or bodily injury to any person caused by or arising out of the use of that vehicle shall be brought without a jury. All actions for damages for personal injuries arising out of the operation of a motor vehicle are required to be tried without a jury.

The insurers are given powers which if properly exercised are potentially of great importance as safety factors. Where any motorist unduly increases the danger to the public, the insurer may apply to a court of summary jurisdiction for an order suspending the motorist's driving privileges.

It is further provided that no insurance policy may be cancelled without giving 14 days notice to the insured and to the registrar of motor vehicles. Upon cancellation of the insurance the registration of the vehicle is automatically cancelled.

5.—QUEENSLAND—1936 AND NEW SOUTH WALES—1942.

Since the legislation which is now in effect in the States of Queensland and New South Wales is similar, they will be considered together. Queensland adopted compulsory liability insurance in 1936 but it was not until 1942 that New South Wales brought in such legislation.

In each of these States, it is a prerequisite to registration of an automobile for the owner to produce evidence that he is insured. New South Wales, however, further demands that the insurance year and the registration year be co-terminus.

In both States the indemnity provided in the event that an owner or driver becomes liable for the injuries or death of a third party in an automobile accident, is unlimited. In New South Wales, the protection for the insured is extended to include the passengers and members of the owner's or driver's family. In both States, there is a provision which allows third parties to recover regardless of whether the automobile was being driven with the owner's consent.

Under the Act of New South Wales, as in other Australian legislation, insurers must be approved and hence authorized to sell compulsory liability insurance.

Under the Act of Queensland, protection is afforded drivers only when they are driving within the State. New South Wales legislation, however, extends its protection to drivers operating in any part of the Commonwealth of Australia. Claims under the Act of Queensland are determined by a judge sitting without a jury. In contrast, the claims heard in New South Wales are generally heard by a jury. In New South Wales, there is provision in the Act for the fixing of premiums by regulation on the advice of a Statutory Premiums Advisory Committee. This Committee includes representatives of Insurance Companies and motor organizations.

In Queensland, a contract of insurance under the Act cannot be revoked during the period of registration or renewal of registration for any motor vehicle.

In Queensland the insurance follows the ownership of the motor vehicle. However, it might be pointed out in connection with the insurance of vehicles that the insuring company or insurance Commissioner cannot be compelled to make a contract of insurance with any owner.

Two points of interest included in New South Wales legislation are:

(*a*) The Government Insurance Office is listed as an authorized insurer.

(*b*) Under the terms of the Act, there is a provision for rebate of premium in case of a duplicate or parallel coverage obtained by taking a second policy of insurance out because the first does not fully meet the requirements of the Act. (This too, indicates State intervention in affording additional protection to insuring motorists by more stringent regulations and duties imposed on insurance companies.)

6.—VICTORIA.

The state of Victoria passed legislation in 1939 in the form of The Motor Car Third Party Insurance Act which, when compared to the similar Acts in force in the rest of the Australian Commonwealth, England, and New Zealand, is far broader in its implications and over-all protection and hence will be treated at greater length in this report.

Under the Act every motor car owner must insure against any liability which may be incurred by him or any person who drives such motor car in respect of the death of or bodily injury to any person caused by or arising out of the use of such motor vehicle. The owner of any motor car who fails to do this is liable on summary conviction.

The applicant for a motor vehicle licence must do either of two things: he may, if he wishes, upon the registration or renewal of registration of the motor car or the granting of any permit under the Act pay to the Chief Commissioner the appropriate insurance premium in respect of the motor car and nominate the authorized insurer with which the contract of insurance is to be made; or he may, if he wishes, purchase his insurance directly from an insurance company and present the certificate of insurance at the time of registration.

When an authorized insurer accepts the appropriate insurance premium paid by the owner in respect of a motor car under the Act, the insurer must furnish the owner with a certificate of insurance in the prescribed form in relation to such motor car, and issue a policy of insurance.

Not only must all cars of Victoria registration carry a policy of insurance but any cars entering Victoria must, as soon as practicable, enter into a contract of insurance with some authorized insurance company.

Every contract of insurance in respect of any motor car enures in favour of the owner for the time being notwithstanding any change in ownership of such motor car.

There is, further, a penalty provided for persons who make false statements in regards to insurance and insuring specifications for the purpose of effecting a contract of insurance under this Act. However, the contract of insurance cannot be avoided by the insurance company by the single reason of this fact.

Before the premiums are paid to the insurance companies by the Chief Commissioner certain deductions are made from the amount of all premiums received by the Chief Commissioner.

With every payment made to an authorized insurer under the Act the Chief Commissioner must supply a schedule of particulars in the prescribed form sufficient to inform the authorized insurer of the following matters in respect to every contract of insurance:

(*a*) The registration number of the vehicle.

(*b*) The premium paid.

(*c*) The date of payment of such premium and the period for which such payment was made.

(*d*) The name and address of the owner.

(*e*) Such other matters as are required.

The Act then goes on to specify how the hospitals and other authorized institutions are to be reimbursed for supplying accommodation and treatment of persons who have suffered injuries, fatal or otherwise.

The Chief Commissioner is required to deduct an amount from each premium received to pay administration expenses. In addition, each authorized insurer and the Chief Commissioner are required to place a specified portion of each premium to the credit of the treasurer.

The fund so created is designated "The Motor Car Hospital Payments Fund".

At the end of each financial year the moneys then standing to the credit of the Fund are distributed among public hospitals of Victoria, which have provided separate accommodation for the treatment of persons suffering fatal or other bodily injuries caused by or arising out of the use of motor cars. These moneys are distributed in sufficient amount to meet interest and sinking fund payments related to capital expenditure incurred in the setting apart or provision of such accommodation.

The respective amounts to be distributed to public hospitals shall be as determined by the Governor in Council after inquiry and report by the Charities Board of Victoria.

Under the Victoria legislation the contract of insurance must insure the owner of a motor car and other persons who at any time drive such motor car whether with or without the authority of the owner.

There is a section in the Victoria Act which is substantially similar to a section in the Road Traffic Act of Britain in which the judgment creditor is given the right to recover directly from an insurance company where a judgment against persons insured under the Act is unsatisfied.

Similarly where liability is incurred by the owner or driver of any motor car in respect of the death of or bodily injury to any person caused by or arising out of the use of a motor car to which a contract of insurance under the Act relates and such owner or driver is insured under the contract of insurance against that liability but such owner or driver cannot after strict inquiry and search be found, any person who could have obtained a judgment in respect of such death or bodily injury against such owner or driver if he could be found may recover against the authorized insurer a sum equivalent to the amount for which he could have obtained a judgment against the owner or driver, or the amount to which the liability of the authorized insurer is limited under the contract of insurance, whichever is the smaller amount, provided that within a reasonable length of time he gives the authorized insurer notice of intention to make the claim and a short statement of the grounds thereof.

In the case of a hit-and-run driver where the identity of the driver or owner of the vehicle causing the accident is not known nor cannot be determined the person injured may obtain judgment against a nominal defendant to be named by the Minister.

The nominal defendant is not, of course, liable to satisfy any judgment obtained against him but the judgment and the nominal defendant's costs are paid by authorized insurers in the proportions determined by the Minister who in so determining must have regard so far as practicable to the premium income in respect of contracts of insurance within the Act, received by each such insurer during the previous financial year.

The Act specially provides for the case where an uninsured car causes an accident involving death or personal injuries. In this event the judgment creditor may obtain judgment against a nominal defendant to be named by the Minister for a sum equivalent to the amount unpaid in respect of the judgment or the amount to which the liability of an authorized insurer might have been limited had there been in force a contract of insurance under this Act relating to such motor car, whichever is the smaller amount.

The amount of any judgment against such nominal defendant may be recovered from the owner or driver of the motor car. The owner may, however, successfully evade payment if he can establish to the satisfaction of the court that such failure to insure his car was not his fault. Or the driver may establish that at the time he drove the motor car, he had the owner's consent and he had reasonable grounds for believing that the car was insured as required by the Act.

Similarly it is possible for a claimant to recover from a nominal defendant named by the Minister in the event that the owner or driver of a motor vehicle was not insured under the provisions of the Act or is dead or cannot be found.

> "Where a judgment for damages is obtained against the owner or driver of a motor car in respect of the death of or bodily injury to any person caused by or arising out of the use of such motor car in Victoria as well as in respect of some other loss or damage the court shall (for the purpose of fixing the liability of any authorized insurer) as part of such judgment adjudge what portion of the amount of the judgment is in respect of such death or bodily injury and shall direct what portion of and in what manner any costs awarded as part of such judgment shall be apportioned to the portion of the amount awarded in respect of such death or bodily injury." 3, Gco. VI, Motor Car (Third-Party Insurance) Act, 1939. Section 16.

On the happening of any accident affecting a motor car and resulting in the death of or bodily injury to any person, it is the duty of the owner as soon as practicable after such accident to notify the authorized insurer with particulars as to the date, nature and circumstances and thereafter to give all such other information as the authorized insurer may reasonably require in relation thereto. In addition, every notice of claim made or action brought against the owner or to the knowledge of the owner made or brought against any other person on account of any such accident shall be as soon as practicable thereafter given by the owner to the authorized insurer with such particulars as the authorized insurer may require.

A further section in this part of the Act, prevents the owner or driver of an automobile from entering into any litigation as to any matter or thing in respect of which he is insured under a contract of insurance or from making any promise of payment, settlement or admitting liability (except under nervous stress at the time of the accident) until he has received the written consent of the insurer.

If the owner without reasonable cause fails to give any notice or otherwise fails to comply with the requirements of this section in respect of any matter, the authorized insurer is entitled to recover from him such amount by way of damages as is reasonably attributable to any such failure.

Under the Act, the authorized insurer may for the purposes of any contract of insurance undertake the settlement of any claim against the owner or against any driver insured under the contract of insurance.

The driver is not entitled to recover from the authorized insurer any sum on account of any moneys (including costs) paid or payable by such driver in respect of his liability for such death or bodily injury if the driver uses a car to which a contract of insurance under the Act relates, without the consent of the owner.

In any case where an insurer makes payment in satisfaction of a judgment obtained against the driver or owner of an insured vehicle for death or personal injuries caused by such driver under circumstances leading to a conviction for drunken driving, the amount so paid out by the insurer may be recovered from the driver.

Where an authorized insurer makes any payment in respect of death or injuries caused to any person by reason of a motor vehicle accident the insurer is required (whether or not he admits liability) to pay to any hospital the cost of treatment rendered to the injured person, subject to a maximum limit. The amount of any such payment is deductible from the total sum for which the insured is liable in respect of such accident.

The Act goes on to make provision for the payment of doctors, nurses, druggists, ambulances and other persons in the event that they render aid to a person injured in a motor vehicle accident for which the insurer is liable. The amounts to be paid are specified and the manner in which payment is made is also outlined.

Under the Act, it is illegal for any person other than a Solicitor or Barrister properly acting in the course of his profession, to solicit authority to make claims or commence "action for damages for the death of or bodily injury to any person arising out of the use of a motor car or in respect of the negotiation compromise or settlement of such claim or action". Further, "any agreement to pay to any person who contravenes any of these provisions . . . shall be void and any money so paid shall be recoverable by action brought in any court of competent jurisdiction by the person who has paid it".

There is another provision in the Act which deals with a person who has refused or neglected without reasonable cause to allow a medical examination after a request on reasonable terms by a defendant or authorized insurer that such person should be examined, for the purpose of ascertaining the nature and extent of the bodily injury sustained by such a person, by a legally qualified medical practitioner nominated by such owner or driver, authorized insurer or nominal defendant, the court or judge may make an order on such terms as seem proper that all further proceedings in such action be stayed.

A section of the Act is devoted to the handling of cases where the injured party is an infant or a person under legal disability and the parent or guardian or next friend of such a person or any person standing in *loco parentis* to such a person believes that the amount of compensation offered or tendered by the insurer or owner is adequate considering the nature of the injury and the improbability of the injured person collecting more by litigation, the person may in the name of the injured party enter into an agreement with the owner or insurer to accept the amount of compensation offered.

The Act has a section (Section 28, subsection (2)) which states that "if there is in force a contract of insurance under this Part relating to a motor car then in any action brought against the owner or driver of such motor car or against any authorized insurer in respect of an accident resulting in the death of or bodily injury to any person being at the time of the accident a passenger for reward in such motor car it shall not be a defence that the contract of carriage had negatived limited or modified the liability of the owner or driver of such motor car".

The Act authorizes the insuring company to apply on the grounds of public safety to the court of petty sessions for the cancellation or the suspension of a driving licence.

During the month of August in each year all insuring companies must furnish to the Minister a return setting forth in respect of the financial year immediately preceding, the following particulars:

(*a*) The total amount of premiums received during the year.

(*b*) The total number of claims made during the year.

(*c*) The total number of payments made during the year.

(*d*) 1. The number of claims made under the Act by authorized insurers against owners and drivers of motor cars.

2. The reasons for the making of such claims.

3. The amounts recovered in respect of such claims.

(*e*) Such other information relating to such contracts of insurance as is required to be furnished by regulations.

This information is then passed to a Premiums Committee which is a Committee set up by the Legislature and whose duty it is to study the information and returns supplied by the Insurance Companies and thus to promulgate maximum rates and surcharges for the coming year.

On the recommendation of the Premiums Committee, the Governor in Council may make regulations for or with respect to maximum rates of insurance premiums and the rates of the surcharges, and other regulations in respect to procedure to be adopted in the hearing of applications for the cancellation of licences, insuring of motor cars, and other matters relating to the business of motor vehicle insurance.

There is a provision in the Act which enables an owner to obtain a rebate of insurance premiums. When after the date of the first registration or renewal of registration of a motor car effected after the commencement of this Act, there remains in force in relation to such motor car a contract of insurance effected before such registration or renewal indemnifying the owner against his liability in respect of some or all of the risks against which he is required to insure under the Act such owner may, by notice in writing to the insurer, cancel such contract of insurance

so far as the same relates to the risks against which he is required to insure under the Act and the insurer shall pay or allow to such owner a reasonable amount by way of rebate of a portion of the premium paid in respect of such contract of insurance. In the event of any difference between the insurer and the owner as to any amount to be so paid or allowed such amount shall be finally determined by the Minister and shall, as so determined, be deemed to be a debt due by the insurer to the owner and be paid accordingly.

The Act further empowers the Governor in Council by an order published in the Government Gazette to constitute and establish a State Motor Car Insurance Office. Such an office is managed and controlled by the Insurance Commissioner who is the same person who for the time being is the Insurance Commissioner under the Workers' Compensation Acts and is subject to the Public Service Acts.

Thus the government of Victoria is given the power to go into the insurance business for the purpose of selling to the public, Liability Insurance. Any surplus at the end of any financial year will be, after all administration expenses, etc., have been paid, placed in a reserve fund which is required to be invested through the Treasurer in securities of the Government of Victoria or of the Commonwealth of Australia. Any balance of the said surplus may be dealt with as the Governor in Council directs.

The following is an abbreviated list of important regulations which were introduced in 1939 by His Excellency the Governor of the State of Victoria.

1. Any authorized insurer who is willing to enter into contracts of insurance at a lower rate of premium than the prescribed maximum rate, shall send or deliver to the Chief Commissioner of Police a notice in the form required by the Act, setting out the rate the said authorized insurer proposes to charge for insurance on all classes of motor cars.

2. Notice must be given to the authorized insurer by the former owner within two days of the sale or disposal of a motor car.

3. The amount deductible in respect of administration expenses under the Act is specified.

4. Any authorized insurer who wishes to make application for the suspension or cancellation of the licence to drive a motor car upon the grounds of public safety, shall serve to such owner or driver a notice in writing in a prescribed form.

5. If the owner or driver named in the notice does not attend at the time or place appointed for the hearing of the application, the court may decide the matter in the absence of the owner or driver.

7.—MASSACHUSETTS.

The Massachusetts Compulsory Automobile Insurance Law is to be found in Sections 1, 1A, 3, 22A and 34A-34J of Chapter 90, Section 8A of Chapter 26, Sections 112, 113, 113A-113G, 182 and 183 of Chapter 175, of the General Laws of Massachusetts (1932) as amended from time to time. The original compulsory insurance provisions became effective January 1, 1927.

Under the Massachusetts law, no vehicle may be registered in the State unless the application for registration is accompanied by a certificate

of public liability insurance or the deposit of security in lieu thereof, unless such vehicle is one owned and operated by the Department of Public Utilities, any street railway company, public control or is an ambulance.

A motor vehicle owned by a non-resident may be operated in Massachusetts for thirty days without insurance. After that time, the owner must register his vehicle in the same manner as a resident and take out insurance.

A judgment debtor is allowed sixty days to satisfy any judgment against him. If, after that sixty days the judgment still remains unsatisfied the Registrar is required to suspend his licence to operate. There is, however, a proviso that if at the time of the accident the judgment debtor had insurance to the extent of at least one thousand dollars ($1,000.00) against liability, he may not have his licence revoked.

In order to satisfy the terms of the Act, a certificate of insurance must be one which has been entered into with an authorized insurer. The policy of insurance must be co-terminus with the registration year.

The policy of insurance does not cover any person driving the car without the owner's consent. It does not cover a guest occupant of the motor vehicle nor does it cover an employee of the owner of the vehicle.

The limits of the policy are as follows: Five thousand dollars ($5,000.00) on account of injury or death to any one person, ten thousand dollars ($10,000.00) on account of injury or death in any one accident involving more than one person.

If, under Massachusetts legislation a certificate of insurance is issued, signed by the proper official and is filed with the Registrar, the Insurance Company is prevented from denying the validity of such a certificate, despite the fact that the certificate may have been issued by someone other than one properly authorized to issue such a certificate. There is, however, a further section which provides a heavy penalty for forgery or the falsifying of such a certificate.

An owner may file one bond or policy in respect of a number of vehicles.

Under a section in the Act, the registration of a motor vehicle terminates on the revocation of a liability policy and the registration remains so suspended until a further policy has been taken out in compliance with the legislation.

If a policy or a bond is cancelled the owner or driver has the right of appeal to a Board consisting of a Commissioner of Insurance or his representative, the Registrar of Motor Vehicles or his representative and an Assistant Attorney General, designated by the Attorney General. Under this section in the Act, any person who has received notice of cancellation of his bond or insurance may file a complaint with the above mentioned Board. By virtue of the fact that he has filed this complaint his insurance automatically carries on until a decision by the Board is reached.

The complaints are generally on the ground that the cancellation of the policy is invalid or improper and unreasonable. If the Board upholds the cancellation of the policy, it fixes a date upon which the cancellation of the policy becomes effective. There is a higher appeal, however, from the Board's decision which is open not only to the company but to the aggrieved individual. Appeal may be taken from the

Board's decision to the Superior Court and as in the case of an appeal to the Board, the policy is continued in effect, pending the decision of the appeal. This appeal is final.

A company is prevented from ignoring the decision of the Court or Board by the threat of having its licence to do business in the State revoked.

Under the Massachusetts legislation the liability of the insurer is absolute. After judgment has been obtained against the policy holder the injured person recovers directly from the insurance company. There is a further section which prevents the insuring company from cancelling its policy after the happening of an accident.

A more liberal policy may be issued by an insurance company provided that such policy incorporates these minimum requirements:

(1) That it is subject to the absolute liability provisions set out above as respects both the owner of the vehicle or trailer insured and any person operating it with the owner's consent;

(2) That no cancellation of the policy will be effective unless fifteen days written notice is given to the party proposing cancellation on a prescribed form to the other party and to the Registrar. (The formalities of giving the notice are prescribed and the return premium rates on cancellation are also prescribed);

(3) That the policy will be terminated by sale or transfer of the vehicle or upon the surrender of the registration plates issued or upon delivery of the certificate of another company;

(4) That if the insurer ceases to be authorized to do business the specified return premium will be paid;

(5) That the policy, the application therefor and any endorsements which do not conflict with the law constitute the entire contract;

(6) That no statement by the insured or on his behalf, either in the issue of the policy or of registration, no violation of the terms of the policy and no act or default of the insured, either prior or subsequent to the issue of the policy, shall operate to defeat or void the policy so as to bar recovery, within the limits provided in the policy, by a judgment creditor who is entitled thereunder;

(7) Upon bankruptcy or insolvency or death of the insured, his legal representatives are covered for a limited time.

Premium rates are fixed by the Commissioner of Insurance, Massachusetts. Any company who is dissatisfied with the rates so fixed may appeal to the Court for review and the decision of the court is final.

If a company does not intend to renew a policy it must give notice of its decision.

Under Massachusetts legislation, rebate of premium or change of rates is forbidden.

8.—AN EVALUATION OF COMPULSORY PUBLIC LIABILITY INSURANCE LEGISLATION.

Compulsory public liability insurance legislation does not purport to be a compensation measure or a method of reducing the number of accidents. As pointed out elsewhere, the essence of public liability insurance

is the protection of the assets of the insured or a guarantee of the ability of the motorist to respond in damages in the event that he becomes involved in an accident attributable to his fault. At the same time, it must be admitted that more injured persons do recover damages than would otherwise be the case. Nor can it be demonstrated that the fact of insurance creates in the mind of the motorist, a psychology of carelessness.

It has been alleged that the compulsory feature in the Massachusetts legislation has failed to achieve 100% compliance. In this connection, the Columbia Committee has the following comment:

> "The Massachusetts law has been criticized because it fails to compel certain defendants in accident cases to insure, particularly persons with cars not registered in Massachusetts, and persons who operate 'bootleg cars', that is, cars operated in Massachusetts without insurance, in defiance of the law. The Committee believes that the problem presented by these groups is not serious."—Report by the Committee to Study Compensation for Automobile Accidents to the Columbia University Council for Research in the Social Sciences, page 115.

The compulsory feature in such legislation gives rise to many difficulties in rate making, apparently in practice as well as in principle. On the one hand, there is the political necessity of keeping rates as low as possible while on the other hand, private insurers hope for adequate returns on their contracts.

> "When and if the State elects to compel motorists to buy insurance as a condition precedent to registering and driving motor vehicles, it must be kept in mind that an additional expense will fall on a substantial number of our people. The insurance cost, therefore, must be as low as possible with due regard to adequacy of rates to insurance enterprise."—Robinette, at page 51, quoting Superintendent Pink from his 1940 report to the New York State Bar Association.

And again at page 55, Robinette states:

> "Quite aside from the increased cost, as such, saddled upon motor vehicle owners it has been argued, not without justification, that there are other persons beside automobile owners involved in the traffic accident problem and to exempt them from contributing to the expense of providing compensation to accident victims is unfair."

In Massachusetts, a bureau has been established for the purpose of gathering statistical material on which rates are based, but the Commissioner who promulgates the rates, is not bound by the recommendations of the Bureau. Professor Blanchard describes the rate making process of that State as follows:

> "Previous to the effective date of the Act, the Massachusetts Automobile Rating and Accident Prevention Bureau was organized at the suggestion of the Commissioner. The Bureau, whose membership includes all carriers writing automobile liability insurance under the Act, compiles statistics, develops actuarial methods, and suggests classifications and rates of premium to the Commissioner. His representative occupies an office adjacent to the quarters of the Bureau, is in continuous contact with its operations, and has access to all data. The recommendations to the Commissioner, which are

accompanied by the underlying data and an explanation of the methods employed in reaching them are in no way binding on him. The rates which he has established each year have been lower than those recommended; he has frequently set up different territorial groupings and at times has also established a different scheme of classification of motor vehicle risks."—Law and Contemporary Problems, Volume 3, No. 4, October, 1936, at page 544.

And again at pages 545-6:

"While rates have shown an increase of over 50% since the inception of the Act, this increase is not necessarily attributable to the Act. During the period 1927 to 1935 while rates were increasing 51.5 per cent. in Massachusetts, they increased 27.6 per cent. in the remainder of the country. But in individual states they increased by widely varying percentages: 1.6 in New York; 79.2 in California; 7.2 in Ohio; 71.7 in Virginia; 21.6 in Pennsylvania; 34.4 in Connecticut, and 61.5 in New Jersey. Mere percentage figures mean little. They depend on the adequacy of rates in the year used as a base, on the action of state authorities, on consideration of business policy, as well as on the underlying experience of the carriers. Further there is no unassailable method of determining changes in level. These figures are informative but not highly significant."

"In Massachusetts the rates for public liability insurance have been set at a level which has brought a considerable net loss to the stock insurance companies as a class."—Report by the Columbia Committee, supra, at page 116.

"The experience for 1927 showed that an actual loss ratio (losses to premiums) of, approximately, 15 per cent. above the loss ratio for which allowance had been made in the rates for that year." —Report by the Columbia Committee, supra, at page 118.

"It seems clear that the statistical work of the Bureau has been of the highest order, that both the Bureau and the Commissioner of Insurance have had all possible facts before them, and that the rates in Massachusetts have not been adequate to their purpose. The sudden imposition of the requirement to insure on automobile owners who had previously carried no insurance, and the large increases in certain territories, which experience under the law showed to be necessary, have tended to make the fixing of rates a political issue." —Report by the Columbia Committee, supra, at page 121.

And again at page 122:

"The enactment of the Massachusetts compulsory law has, unquestionably, brought in its train financial difficulties for insurance carriers as a whole. Any state which might pass a compulsory law, whether for liability insurance or compensation, would, in all probability, require strict regulation of rates."

"The problem of distributing the so-called hazardous risks, namely, the risks which are more likely to produce losses is one which should be carefully studied. Whatever plan is developed it should be a plan which gives consideration to the ready acquisition of insurance by any applicant who is entitled to use the highways

in the opinion of the supervisor of registration."—Robinette, supra, at page 60.

Difficulties are bound to arise where the public are compelled to insure with private insurance companies. On the one hand, there is the strong inducement for new insurance companies to spring up in order to grasp a share in the secure market. *(See Footnote). On the other hand, there is the possibility of insurance companies agreeing among themselves to set rates which are higher than experience would justify—monopoly rates which would yield the optimum of profits to the members of the association. The state must necessarily intervene in the rate making process in order to protect the public against such imposition. As soon as a state agency becomes thus involved, rates are almost inevitably a sensitive variable of political pressure. Complaints from insurers that they are not able to establish rates sufficient to assure an "adequate" return on their investments are inevitable. But it is very difficult to make out a case to justify the State compelling its citizens to patronize private enterprise under circumstances which permit the insurers to make a profit. There is no available evidence to indicate whether, in those states with publicly owned insurance companies, the competitive influence of the State company is, or would be alone sufficient to regulate general rates of competing insurers. But at any event, it is suggested that in such States the law should require that such insurance be taken out with the State corporation, or if rates are too low, the difference must be made up out of the consolidated funds, being reflected in the tax rate, whereas if too high, any surplus is available for re-investment in social enterprise and service. In either case, political pressure would no doubt be brought to bear to restore equilibrium between premium income and cost of operation.

Many criticize compulsory liability insurance on the ground that it forces insurers to accept risks which they would otherwise reject. It is true that one might expect fixed rates to benefit those motorists who otherwise would be surcharged. The rates are no doubt set on the basis of general accident frequency, thus requiring accident free motorists to pay a premium which has been calculated on general experience of all motorists, including the worst. This, of course, is a detail which is not insoluble. It would be quite possible even under a system of private insurance to allow insurers to surcharge premiums for specific reasons allowing an appeal to a Board or a Court. Some legislation does provide for the cancellation of an insurance policy, resulting in automatic cancellation of the motor vehicle registration. The effectiveness of this provision in Massachusetts is somewhat obscure however.

> "Owing to the method of classification used by the Board, it is rather difficult to draw accurate conclusions from these statistics. For example, 7,491 of the cancellation cases recorded as 'annulled', or 40 per cent. of the total of such cases, were listed as 'reinstated by carriers'. While there is no record of the motivation behind reinstatement, it was probably usually due to the carrier anticipating annulment of the cancellation."—Professor Blanchard in Law and Contemporary Problems, supra, page 552.

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*Footnote.—"No one could have anticipated the rise of irresponsible mutual carriers which were content to accept risks unacceptable to the many sound mutual and stock companies authorized. These companies were often organized by promoters with only their selfish interests in mind. These men 'milked' the companies."—Louis H. Pink, Superintendent of Insurance for the State of New York as quoted at Pages 12 and 13 of the 1940 Committee reports—Annual Meeting Minnesota State Bar Association.

"The Massachusetts law has been freely criticized on the ground that it tends to increase accidents. It is argued that persons who do not voluntarily carry insurance are, for the most part, persons of small means who will tend to drive carefully because they fear personal liability for injuries; and that when they are forced to insure, they lose the restraining influence exerted by the fear of personal liability."—Report by the Columbia Committee, supra, at page 125.

Again at page 126:

"If one is to accept the fatality rate in Massachusetts as evidence of the bad effects of the compulsory liability law one must on similar evidence condemn the financial responsibility law in Connecticut and the lack of either law in Pennsylvania."

"As stated in the preceding chapter, the Committee concludes that neither the actual nor the recorded annual numbers of fatal or of non-fatal accidents within a state affords reliable evidence of changes affected by a compulsory liability insurance law or by a financial responsibility law or by any other single factor affecting highway safety."—Report by the Columbia Committee, supra, at page 127.

And again on page 127, it is stated:

"The assurance to all injured persons of a financially responsible defendant is an incentive for all injured persons to seek compensation and this may well explain any increase in claim frequency."

Professor Blanchard, writing in Law and Contemporary Problems, supra, at page 552, says:

"It has frequently been contended that the Act has increased accidents in Massachusetts. The argument in support of this contention rests in many cases on the sincere conviction that persons who are required to carry insurance are made more careless than they would be without insurance. It is the equally sincere conviction of many (including the writer) that insurance has no appreciable effect on the safety with which these insureds drive."

If the argument that compulsory insurance encourages careless driving is true, then by the same token financial responsibility laws, which require people who already have been involved in an accident to prove financial responsibility, must also encourage carelessness among the group required to insure, thus tending to counteract the alleged safety value of such laws. The argument implies that judgment-proof motorists are proportionately involved in fewer accidents than those financially able to respond in damages. There is no provable justification for this assumption and those with experience of the automobile accident problem in this province, are fully aware of the large number of motorists without assets who find themselves involved in motor vehicle accidents. The argument would support the contention that automobile insurance of any kind is detrimental because upon becoming insured, the motorist becomes a menace to life and property. It is suggested that fear of personal injury and of the penal consequence of reckless driving remain deterring factors.

"Other criticisms which are commonly directed against the law and some of which have been presented to the committee, are: First, that it will encourage carelessness. We believe this to be unsound.

It strikes at all liability insurance. We think that self preservation and the fear of the penal law are the primary factors which influence the conduct of most drivers and not the possession of a liability policy or the lack of it."—Report of the Special Committee on Compulsory Insurance for Motor Vehicles, presented to the Minnesota State Bar Association, 1940, at page 13.

Secondly, Massachusetts experience does not prove that it drives the poor man off the road.

"There seems to be no doubt that the compulsory liability law has greatly increased litigation, and consequently has increased the congestion of judicial business. This is the natural result of assuring a financially responsible defendant to almost everyone injured in a motor vehicle accident."—Report by the Columbia Committee, supra, at page 124.

Professor Blanchard, writing in Law and Contemporary Problems, supra, states at page 548:

"It appears probable that the Act is responsible for the very great increase in claim frequency as compared with other states."

Again at page 548:

"Whether the large number of claims is due primarily to fraud, to the general knowledge that all Massachusetts cars are insured, or to other influences, the writer is unable to state. Fraud has been present, but whether it has been on a more extensive scale in proportion to the insurance available than in other states is problematical."

John J. Robinette in his Report, supra, at page 57 says:

"Those who oppose the adoption of compulsory insurance do so, *inter alia,* on the ground that compulsory insurance leads to increased claims (many, it is said, without justification as involving relatively minor injuries or property damage claims converted into an alleged personal injury claim) and to many fraudulent claims and practices. Considerable opinion evidence has been quoted herein on this point. Quite aside from the increased insurance costs attributable to these it is contended that any system which introduces features which give rise to improper claims and fraudulent practices is definitely not in the public interest."

The "Claims Racket" as it exists in Massachusetts is not peculiar to that state. Many states in the union have been confronted with this problem almost from the inception of the automobile.

The problem reached such proportions that many communities find it necessary to organize Public Committees in an attempt to suppress the practice (See Liability Claim Racket, by Robert Monaghan, Law and Contemporary Problems, supra, at page 491). An increase in claim frequency or an increase in litigation is not, in itself, an evil. There can be no objection to a person who has been injured by the negligence of another, recovering his damages. Nor can there be any objection that the insurance company is required to indemnify the insured on that account. The purpose of the law is to assure that every motorist will be financially responsible. If litigation is therefore necessitated, the insurer can not complain that he is being unfairly treated for if the court should find in its favour, it would cost the insurer nothing. It is hardly reasonable to insure a motorist against loss and then complain when indemnity

is sought. At any event, the judgment realized and insurance moneys recovered by those suffering injury is much greater than is otherwise the case.

The discussion up to this point has concerned itself chiefly with the compulsory feature of the law. It is not so much in reference to this feature (apart from certain defects which are capable of being remedied) the Committee takes objection to, as with the retention of defective principles inherent in public liability insurance. The following criticism of the liability insurance feature as set out in Robinette's report (supra) deals with the Massachusetts legislation, and many of the points made by him have been taken into account by other states in enacting their compulsory insurance legislation. There are certain defects however which are inherent to liability insurance, as such. But as pointed out earlier liability insurance is founded upon the law of negligence whether it be insurance taken out on a voluntary basis or otherwise. It is this feature to which the Committee takes the greatest objection.

At pages 61 and 62 in his Report, supra, Robinette states:

> "There is perhaps some considerable misunderstanding as to the cases reached by a compulsory insurance law similar to that in force in Massachusetts. An examination of the Massachusetts statute will make it quite clear that the law is not a compensation law, i.e. an injured party to recover must do so on the basis of the law of negligence and that the following cases are not reached:
>
> (*a*) injuries suffered by guest occupants;
> (*b*) injuries sustained in collision with any of the excepted vehicles;
> (*c*) injuries suffered as a result of a hit-and-run driver;
> (*d*) injuries suffered where the vehicle has been stolen or is driven without the consent, express or implied, of the owner;
> (*e*) injuries suffered in an action off the highways;
> (*f*) injuries suffered as the result of an accident involving a non-resident's car;
> (*g*) injuries suffered by a person in another jurisdiction as the result of an accident involving a Massachusetts car;
> (*h*) injuries suffered in an accident involving a vehicle in respect to which there is no insurance in force;
> (*i*) property damage.

9.—COMPARATIVE EFFECTIVENESS OF COMPULSORY PUBLIC LIABILITY INSURANCE AND FINANCIAL RESPONSIBILITY LAWS.

In essence, the compulsory public liability insurance systems now in force closely approximate financial responsibility laws. The financial responsibility law contains certain ingredients allegedly conducive to highway safety—and this the liability law does not purport to do. To the extent that the two systems compel certain persons to insure, they are different only in degree and the arguments for or against either one reflect upon the other. Many of the proponents of financial responsibility criticize compulsory liability insurance law in terms which themselves undermine the case for financial responsibility laws, e.g. increasing claims—promoting carelessness—keeping the poor man off the road. The following passages from the various reports of the Committee of the Minnesota State Bar Association which investigated the desirability of compulsory insurance

law for that state set out the case for compulsory liability insurance fairly completely. It has been concluded that the financial responsibility law has been responsible for 1/17th of 1% of registered cars being insured. *(See footnote.)

The Report of the Special Committee on Compulsory Insurance for Motor Vehicles to the Minnesota State Bar Association, 1940, at page 10, states:

"1. Compulsory liability insurance has largely eliminated the evil of financial responsibility.

2. Compulsory liability insurance provides security against the first as well as subsequent accidents.

3. Compulsory liability insurance is a marked success in Great Britain and other European countries.

4. Recent experience in Massachusetts with compulsory insurance has greatly remedied errors which foresight could not have avoided.

5. The people of Massachusetts are opposed to the repeal of their law.

6. The proposal of the majority of this committee reasonably meets all serious objections urged against the Massachusetts act in the matter of fixing rates and the selection and rejection of insurance risks.

7. Financial responsibility laws of Minnesota, New Hampshire or elsewhere do not provide security for the first victim or his dependents.

8. The uniform financial responsibility act of Minnesota, during its six years of operation, has not noticeably increased the liability insurance coverage, reduced accidents or assisted in the collection of claims.

9. Minnesota has nearly 700,000 uninsured vehicles presently upon its highways.

10. Only eighteen per cent. approximately of the registered motor vehicles in the state are insured.

11. Minnesota annually during the past six years has had approximately six hundred fatal highway accidents and approximately eighteen to twenty thousand non-fatal."

And again at page 12:

"Numerous investigating committees throughout the country have reported favorably on compulsory insurance but in every instance a powerful and well organized opposition, mainly from the same quarter, has stood athwart their recommendations.

"The companies, while opposed to the principle of the Massachusetts Act because they perceive in it a threat of state insurance, (something experience does not seem to justify), centre their attack upon two of its administrative features; one which gives to the

*Footnote: "Therefore, the law has been productive of approximately 500 new policies or about 1/17th of one per cent. of the registrations for 1939 alone."—Report of the Special Committee on Compulsory Insurance for Motor Vehicles to the Minnesota State Bar Association—July, 1940, page 11.

Commissioner of Insurance the right to fix rates; the other which empowers a Board of Appeal, after a hearing, to compel the acceptance by the carriers of prospects found by the Board to have been unreasonably rejected."

Again at page 13:

"Other criticisms which are commonly directed against the law and some of which have been presented to the committee are:

"First, that it will encourage carelessness. We believe this to be unsound. It strikes at all liability insurance. We think that self preservation and the fear of the penal law are the primary factors which influence the conduct of most drivers and not the possession of a liability policy or the lack of it."

Secondly, Massachusetts experience does not prove that it drives the poor man off the road. At page 15 it is stated:

"Property damage has been omitted principally because the social implications flowing from such loss are inconsequential as compared with bodily injuries."

The Report of the Committee on Compulsory Insurance for Motor Vehicles to the Minnesota State Bar Association, 1943, at page 20, states:

"Active organized opposition to the Association's bill was directed principally by certain insurance companies, and while some members of the Legislature from farming communities report many farmers are opposed to compulsory insurance, the Committee feels that such opposition was to a great extent inspired by the Insurance Fraternity."

With deference, the present Committee can not agree that compulsory insurance can operate efficiently while in the hands of private insurers.

The reasons for this conclusion have been more fully dealt with above. However, it seems quite apparent that the compulsory public liability insurance system gives substance to the remedy available at law to the victim of negligence to a greater degree than does either the voluntary insurance system or financial responsibility laws. There is, moreover, nothing inconsistent in the establishment of effective practices in traffic control together with a compulsory insurance law. Because compulsory insurance does not in itself contain elements conducive to safety is therefore no reason for rejecting it. The fault of compulsory liability insurance springs from the nature of the insurance itself rather than from the fact of its being universal. The Massachusetts situation has been summed up in impartial terms by Professor Blanchard writing in Law and Contemporary Problems, Volume III, No. 4, October, 1936, at page 553, where he says:

"Is the Act a success? It is impossible to answer this question in terms of any criteria which would be generally acceptable. Unquestionably many just claims for damages have been paid which would not otherwise have been met, at least to the same extent. The Act has largely accomplished its purpose of making motorists in Massachusetts financially responsible. That it does not reach 100 per cent. of the motorists nor cover all injuries makes it no less successful within its scope. It is neither a safety nor a compensation measure. It should be judged on its worth as a financial responsibility law.

"The Act has given rise to political difficulties, it has involved insurance companies in underwriting losses, and it may have led to fraud. It is not possible to weight these two sides of the case, one against the other, with scientific exactness. One's opinion must be based on impressions and ideals."

SECTION 4.—COMPENSATION PLAN.

In April, 1929, a Committee was established under the Columbia University Council for Research in the Social Sciences, for the purpose of studying the problem of compensation for victims of automobile accidents. Under the direction of Mr. Shippen Lewis, this Committee, consisting of fourteen insurance and legal experts, devoted almost two years to a thorough study of every aspect of the problem and presented its report in 1932. Its recommendations suggested a completely new approach, rejecting the accepted bases of legal liability for automobile accidents.

The attitude of the Columbia Committee toward the principle of negligence as the criterion for determining the right to compensation of any person for losses suffered in a motor vehicle accident, is summed up as follows:

"In motor vehicle accident cases, the principle of negligence is peculiarly difficult to apply. In most automobile accidents, a car collides with another car or with a pedestrian. All the action occurs within a few seconds. It is almost impossible for witnesses, even though they have not been participants in the accident, to remember and to reproduce exactly to the jury swiftly succeeding events which they have been neither trained nor prepared to observe. Litigation in such cases results in jury trials which are largely contests of skill and chance."—Page 137, Report by the Committee to Study Compensation for Automobile Accidents to the Columbia University Council for Research in the Social Sciences.

1.—LIABILITY WITHOUT FAULT.

The Columbia Committee considers that a more adequate solution lies in the introduction of the principle of absolute liability or liability without fault into the field of automobile liability. This principle has already been adopted by statute in Sweden, Denmark and Finland. It is not a principle new to our own common law. As the Columbia Committee has indicated, where a person keeps on his land some thing which, if it escapes, is likely to do harm, that person is liable for any damage whether he is negligent or not: Rylands v. Fletcher, 1868, L.R. 3, H.L. 330.

Again, "He who keeps a dangerous animal keeps it at his peril. Every man is bound at his peril to prevent such animals from going at large or from obtaining in any other manner an opportunity of exercising their mischievous instincts. If any harm is done by them, he is liable without any allegation or proof of negligence, unless there exists some specific ground for exemption."—Sammond on the Law of Torts, 9th Edition, 554.

A third example of this principle is the law of respondeat superior which holds a master responsible for the wrongful act of his servant done during the course of the servant's employment and irrespective of whether or not the master knew or ratified the wrong.

2.—ABSOLUTE LIABILITY OF EMPLOYERS.

The most common example of liability without fault in western jurisdictions is that imposed by statute upon employers for injuries sustained during the course of their employment. The employer is liable whether the injury resulted from *his* negligence or the negligence of the *workman* or the negligence of a *fellow servant.* (See The Workmen's Compensation Act, R.S.S. 1940, Chapter 302.) The Workmen's Compensation (Accident Fund) Act, now R.S.S. 1940, Chapter 303, introduced into Saskatchewan in 1930, is a logical extension of the above principle, and in effect, merely imposes upon the employer the requirement that he must contribute annually to a fund, or, if you wish, insure himself, so that the workman is assured of recovering compensation for the injury.

> "Workmen's Compensation laws were adopted in this country not because of a theoretical preference for the principle of liability without fault, but because it had become imperative to discard a system which worked very badly and to try in its place a new system which gave promise of success. At common law before the workmen's compensation laws, the injured employee sued the employer and had the burden of showing that the injury was occasioned by the employer's negligence. In addition, it was necessary for him to meet the defenses of assumption of risk, contributory negligence and that the injury was occasioned by the acts of a fellow-servant."—Report by the Committee to Study Compensation for Automobile Accidents, Columbia University Council for Research in the Social Sciences, at page 134.

It requires little imagination to appreciate the inconvenience and distress which such a system imposes upon the workman and his family. There was no means to insure them a sufficient income to keep body and soul together during the long delay which inevitably intervenes between the accident and the final recovery of the judgment. Although the liability may be insured against, it is possible and even probable that those employers whose assets were insufficient to satisfy a judgment would be the very ones who would not insure against it. It is just as reasonable to suggest that unless a workman had a sufficiently clear case to induce a solicitor to represent him on a contingency basis, the legal expenses required for him to start his action would be sufficient to discourage him from the beginning.

3.—ANALOGY TO MOTOR VEHICLE ACCIDENTS.

> "In many respects there is a close analogy between the industrial situation where workmen's compensation has been developed and the motor vehicle situation where the application of a like principle is now being discussed. Accidents are inevitable, whether in industry or in the operation of motor vehicles. It has been accepted as sound policy that the major part of the cost of accidents to employees should be borne by the industry, and it is proposed that the major part of the cost of those caused by the operation of motor vehicles should be cast upon the persons for whose benefit the motor vehicles are being operated. The conditions calling for the application of the compensation plan are similar: The failure of the common law system to measure up to a fair estimate of social necessity."—Report by the Committee to Study Compensation for Automobile Accidents, to the Columbia University Council for Research in the Social Sciences, at pages 134-35.

The Columbia Committee found three points of difficulty which might be expected to arise in administrating a compensation plan for the victims of automobile accidents. Firstly, it would be much more difficult to prove that an accident was caused by the operation of an automobile than to prove that an accident arose out of and during the course of employment. (The present Committee was confronted with the same difficulty and of necessity found itself required to more clearly define the risk insured against, as will later appear.) Secondly, the amount of compensation to be paid presents difficulties not found in Workmen's Compensation law because not only workmen, but housewives, children, employers and the unemployed, all are potential victims of automobile accidents. Thirdly, there is the problem of guaranteeing the recovery of payment to the claimant. The Committee considered that although there is close analogy between this problem and the one raised under Workmen's Compensation law—the provision of medical and hospital services, would be more difficult in automobile accident cases.

Workmen's Compensation law pays close attention to the reduction of accidents. It provides for industrial rehabilitation. The periodical payments made under workmen's compensation may have to be less important in automobile accident cases than lump sum allowances. All these questions present themselves for an answer in working out any scheme for the compensation of the victims of automobile accidents.

> "Aside from dissimilarities in conditions which may entail administrative difficulties such as are enumerated above, the chief query as to the analogy of the two situations has to do with the absence of the employer-employee relationship between the two parties affected by the plan. The insistence on the importance of this relationship, however, magnifies the source of the economic evils sought to be adjusted and gives too little attention to the evils themselves. It is with the consequences of these accidents that the Committee is concerned—whether death or disability with its train of distress and suffering and want be caused by the operation of a machine in a factory or a motor vehicle on the road."—Report by the Columbia Committee, supra, at page 136.

> "Nor, in the main, is there room for question that in each case it is on behalf of the owner and in the furtherance of his interests, that the vehicle or machine is being operated. Like consequences are being produced. Like remedies are being proposed."—Report by the Columbia Committee, supra, at page 137.

4.—OUTLINE OF THE COLUMBIA COMPENSATION PLAN.

The plan presented by the Columbia Committee for the compensation of the Victims of Automobile Accidents is outlined on pages 137-144 of their report. In brief it is as follows:

(*a*) The compensation plan imposes a limited liability upon the owners of motor vehicles for personal injury or death caused by the operation of their motor vehicles without regard to fault and provides security for this liability by requiring every registered owner to insure against it.

The policy of insurance would insure the owner and anyone driving with his consent but as in the case of present forms of public liability policies, would not guarantee compensation to the victim of a person driving without consent or of a hit-and-run driver. The owners of auto-

mobiles registered outside the jurisdiction are subject to the same standard of liability while in the jurisdiction but there is no practical way, in the opinion of the Committee, to enforce insurance.

> "When can a motor vehicle be said to cause injury or death? This question is also presented in applying the law of negligence. The Committee suggests that a compensation law should use the word 'cause' allowing the administrative board and the courts to apply accepted legal principles in the process of interpretation. It would, of course, be possible to limit the liability of an owner to cases in which his motor vehicle caused the injury by collision, thus omitting such cases as those in which a motorist causes an accident by his glaring headlights or by forcing another off the highway."—Report by the Columbia Committee, supra, at pages 138-9.

(*b*) In fixing the incidence of liability, the Committee became involved in complications arising out of the assumption that insurance would be provided against liability by private insurers. It was suggested that in the case of collision, the owner would compensate the occupants of his own vehicle and would look to the other owner for compensation for his own injuries. Where a pedestrian was injured as a result of the operation of two or more vehicles he should look to each of them for contribution to the loss.

(*c*) In settling the question of subrogation, the Committee suggested that if the accident were caused by the negligence of some person not concerned in it, the owner or insurance carrier should be subrogated to all rights of action against that person.

(*d*) Compensation would be payable under the plan in respect of injury or death to any person caused by the operation of a motor vehicle unless such person were injured as a result of his own misconduct or unless he is the owner or driver of a motor vehicle, unless such owner or operator is injured as a result of collision with another motor vehicle.

(*e*) The Committee based its compensation provisions on the New York and Massachusett's Workmen's Compensation law and made the following suggestions:

1. Medical care should be paid for the whole period of disability;
2. No compensation should be paid for the first week of disability;
3. Weekly indemnity is based upon wages in the case of workmen, profits for business and professional persons, wages during the last period of steady employment in the case of the unemployed, wages paid in the same locality for similar work in the case of housewives, and an assumed minimum wage in the case of students, etc.;
4. The amount payable is two-thirds of the average weekly earnings or, in case of partial disability, two-thirds of the difference between the average earnings before the accident and the average earnings after the accident. Allowances for dismemberment are also set out in a schedule, the amount being roughly determined on the basis of two-thirds of the estimated income lost for the period of disability. Allowances are also provided for the claimant who suffers disfigurement. In case of death, payments may follow closely the Workmen's Compensation law but make some small

provision for housewives and students over nineteen. The compensation is paid to the dependents of the permanently unemployed or earners without dependents who are killed in automobile accidents. Funeral expenses are provided in all cases with a maximum of $200.00.

Note: The above summarization of benefits payable is very general and for a more accurate and detailed description reference should be made to Appendix No. 1.

The Committee assumes that each jurisdiction would follow Workmen's Compensation practice and determine whether insurance should be carried by private insurance, state fund or both. The presentation of a certificate of insurance would be a condition precedent to the registration of any motor vehicle.

Compensation would be in lieu of all rights of action against the owner or operator of a motor vehicle unless the plaintiff is a person excluded from the operation of the law. The Committee favoured a Board for the administration of the law similar in all respects to the Workmen's Compensation Boards in the various jurisdictions.

It was recognized that prompt and accurate reporting of accidents is an essential feature of the effective operation of such a plan. Each owner and operator involved in an accident would be required to notify the Commissioner of Motor Vehicles within a stated time, and any person injured would be required to report to the Compensation Board and the insured motorist, giving the nature and extent of the injury as well as the name and address of the attending physician.

5.—EVALUATION OF THE COLUMBIA PLAN COMPENSATION LAW

It is said that the merits of this type of law are:

1. that it abolishes the doctrine that no liability exists in the absence of fault, and thus gets away from "pot luck" verdicts; also, that it provides compensation (along the model of Workmen's Compensation) as distinguished from damages, for persons injured by motor vehicles;
2. that it will lead to prompt settlement of claims and avoid litigation.

The objections advanced to the adoption of this type of law are:

1. that the doctrine of negligence has not (with the statutory amendments thereto) outlived its usefulness;
2. that the cost of compensation will be excessive and disproportionate to the benefits;
3. that a schedule of benefits will be almost impossible to establish and to apply fairly; also, there will be constant pressure for the increase of benefits; in certain cases the benefits may be quasi-old age pensions, or disability benefits;
4. that, if the benefits are provided by insurance, the political factor in rate making is bound to appear;
5. that risks which are uninsurable will be forced upon insurers by political pressure;
6. that many cases will not be compensated, i.e. the plan does not offer relief to every automobile accident victim;

7. that there will be an enormous increase in claim consciousness and fraud and a resulting increase in cost through petty claims, etc., and burdens of administration;

8. that administration through special tribunals will lead to growth of a new bureaucracy and will not obviate all litigation by any means; in fact it may complicate litigation and add expense;

9. that the failure to cover property damage will lead to serious problems.

"From a review of the evidence I have been able to obtain I am convinced that, at the present stage of its development, at least, this plan has far greater disadvantages than advantages. The fact that it does not cover all automobile accident victims, that its cost would undoubtedly be staggering and that it would be difficult to administer is, in my opinion, enough to justify my view that it has not been developed to a point where it can safely be adopted in Canada.

"In approaching this problem it must be remembered that there are a number of points of view. In the first place, there is the purely social point of view of compensating the injured person or his dependents aside from any question of fault. Then there is the point of view of the motorist who must bear the cost, and there is also the desirability of trying to reduce the number of accidents, i.e. to promote safety. Any plan which does not give full consideration to all these factors should not, in my opinion, be adopted. I believe that the compensation plan, as presently formulated, stresses the accident victim compensation aspect without due regard to other factors. It is not even thorough going in this respect for it debars from compensation many who are injured. Why should the victims of automobile accidents be singled out as entitled to compensation? If the principle is sound the victims of all accidents are entitled to the same protection."—Report on the Problem of Providing Compensation for Victims of Motor Accidents, prepared by John J. Robinette, at page 119.

The present Committee can not reject the principles of the Columbia Plan on the basis thus outlined by John J. Robinette. It has concluded that the fundamental principle of this plan more nearly solves the problem of the uncompensated victim of automobile accidents than does any other yet promulgated. As indicated elsewhere the application of the rule of negligence in particular cases, leaves much to be desired. The statutory attempts to solve the question of liability in motor vehicle cases is an indication that the legislatures themselves appreciate the inadequacy of the liability laws.

At common law, the plaintiff must prove that the defendant was negligent. If the defendant can show that the plaintiff himself was in some degree negligent and thus contributed to the cause of the accident, plaintiff recovers nothing. The Contributory Negligence Act, attempting to overcome the injustice resulting from the application of this extremely technical legal concept, provides that if damage is caused by the fault of two or more persons, the judge or the jury must apportion the damage for which each negligent party is responsible according to their respective degrees of fault. There is a further provision in most jurisdictions providing that in case of a motor vehicle accident, the onus of proving that the accident is not wholly the fault of the motorist, lies with him. The

Statute law is being developed to the point where the introduction of absolute liability is but a short step.

In adapting the compensation plan for the basis of legislation in a jurisdiction such as Saskatchewan, it is, however, necessary to revise, modify, or even abandon some of the concepts created or borrowed by the Columbia Committee.

It is felt, for instance, that the motorist can not, having regard to the average income in this province, bear the full burden of a thoroughgoing compensation scheme. At the same time, it is considered necessary that the victims of automobile accidents and their families should be guaranteed a certain minimum of security, which will enable them to withstand the economic shock consequent upon these accidents. The existence of a Government Insurance Corporation can be utilized to reduce the cost to the motorist. The legislation can be framed to provide for prompt payment. The existing judicial machinery may be used in place of the administrative board contemplated by the Columbia Committee and the cost of recovering can be reduced to a minimum.

The Committee has had nevertheless considerable assistance from the findings of the Columbia Committee.

Part II

SECTION 1.—PLAN PROPOSED FOR SASKATCHEWAN

The analysis of the problem of compensating the victims of automobile accidents and of the various proposals to solve it has left the Committee with certain definite conclusions. The conclusions have in one form or another appeared as comments in the first part of this report, but they are here summarized in the form of an introduction to the outline of the plan proposed for Saskatchewan.

1.—INTRODUCTION

Perhaps no other rule of law is more becoming democratic society than the law of negligence. It requires each individual to take care lest his carelessness should cause damage to others as they pursue their lawful business. It confers upon that individual the concomittent right to assume that others will conduct themselves as reasonable men, where clumsiness or carelessness would endanger his safety and should he suffer injury because of their failure so to conduct themselves, he is given a right to recover damages against the negligent persons.

The growing complexity and rapidly accelerated pace of a mechanical civilization, however, have multiplied manifold the potential dangers and the degree of damage resulting from negligent conduct. The man who drives the bulldozer must take more precautions than the man who wields the pick and shovel: The man who drives the automobile must take more precautions than the man who drives the horse and buggy. The higher the absolute standard of care is, the more frequently is the individual likely to fall short of that standard. The negligent man is seldom negligent to a criminal degree. It is suggested that every motorist, for example, is negligent at some time or other. He may have been driving too long and become sleepy. He may, unconsciously, have wandered to the wrong side of the highway. He may have forgotten to give the proper signal when turning the corner. Whether or not he becomes involved with another car or a pedestrian during one of these momentary short-comings, is largely a matter of chance. On the other hand, many persons in control of dangerous instrumentalities are judgment proof and unless the victim is fortunate enough to be struck by a financially responsible person, his legal right to recover damages, is valueless.

In the industrial world, the conviction gradually came to prevail that industrial accidents were indigenous to modern methods of production and that the remedy afforded by the common law more often than not, failed to achieve results consonant with essential justice. Consequently, statutes were enacted in most jurisdictions of the western hemisphere founded on the principle of absolute liability. For example, see The Workmen's Compensation Act, (Cap. 302, R.S.S. 1940). This Act enables the workman to recover limited compensation from his employer for injuries sustained by him during the course of his employment, whether such damage was caused by the negligence of the employer or by his own negligence. The logical development of this statute was the enactment of The Workmen's Compensation (Accident Fund) Act, now Cap. 303, R.S.S. 1940.

This abrogated the right of employees in certain industries, to bring action against their employers, or any other employer covered by the Act, for the recovery of damages for injuries sustained during the course of

their employment and which required all employers to contribute to a central fund out of which compensation should be paid employees for industrial accident injuries.

The factors which have made acceptable, and even desirable, public intervention in the field of industrial accidents, are present in no less degree in the field of automobile accidents. The automobile performs an essential function in the modern economy. It is a dangerous instrument which, out of control for the minutest space of time, may cause great damage. As stated earlier, every motorist is, because he is human, negligent at some time or other while on the highway and it is largely a matter of fortune whether or not someone is in a position to suffer injury through his neglect at the time.

At common law, the most that such a motorist could hope for was that the person injured was himself negligent in such a way as to contribute to the accident, for then, the injured party could recover nothing. The most that the injured party could hope for was that the man who caused the injury was wealthy or insured.

The application of the law in any particular case has proved a complex process and rendered the administration of justice somewhat uncertain. One attempt to alleviate the problem is found in the uniform Contributory Negligence Act which requires the court to apportion the degrees of fault between those responsible for the accident, and to fix the damages accordingly. But even this does not assist the person who obtains a judgment against one who is financially irresponsible, nor does it relieve the unfortunate motorist, who has to part with the little property he has been able to accumulate through a lifetime of hard work in order to pay a judgment obtained against him because he was momentarily careless on the highway.

In 1944, there were 180,959 drivers of 140,977 motor vehicles in Saskatchewan and less than 12% of these vehicles carried public liability insurance. This Public Liability Insurance guarantees the recovery of damages by a third person who is injured as a result of the negligence of the insured but even though every owner and driver of an automobile carried public liability insurance, it would mean that on the average less than one out of every two people involved in a motor accident would recover, since only the innocent victims would recover and the negligent person would not. Members of the insured's family can never recover under a policy for damage caused by the negligence of the insured. In constructing the framework for the proposed Act, the Committee has been guided by the following principles:

That the widest possible protection should be afforded to the public having regard to the income from premiums collected;

That public liability insurance does not afford this protection, for it permits a third party to recover from the insurer only if he can prove negligence on the part of the insured; it does not protect members of the family of the driver;

That public liability insurance does not afford protection against hit-and-run drivers;

That the rates for each general class of vehicle should vary directly as the risk experience of that group varies and that they should be fixed to give the greatest possible protection to those injured but at the same time, be within the capacity of each owner or operator of a vehicle to pay;

That the competence of the provincial legislature to require every motorist to take out a policy of insurance with The Saskatchewan Government Insurance Office is constitutionally permitted.

2.—STATUS OF THE GOVERNMENT INSURANCE OFFICE

The Committee will propose a universal automobile accident insurance plan—a limited extension of The Workmen's Compensation (Accident Fund) principle, contributed to by motorists generally and giving protection to all victims of automobile accidents, regardless of fault. This plan proper can be more conveniently discussed in a later section, however.

Leaving aside for the moment, the type of insurance which should be introduced, another fundamental principle must be discussed, for upon it depends the efficiency with which the scheme is able to operate. The question is this: Should the state insurance office be regarded merely as one competing company or should it be regarded as the exclusive agency through which the plan should operate?

(*a*) The Function of Government

Human beings are brought into the society of others by the impulses of human nature. Each human being requires stimuli from his environment in order to achieve the fullest physical and psychological development. The dependency of the sexes and of the very young upon their parents makes inevitable the society of the family. The presence of several persons in a family group facilitated the satisfaction of economic wants by dividing broadly the necessary labours to the obtaining of food, etc., and the clan or tribe logically ensued from the smaller family unit. The broadening of any society makes possible the easier satisfaction of old wants and creates new ones, but at the same time, the limited supply of natural material things has usually brought a conflict among the individuals in any group as each endeavours to obtain his requirements. The function of law, and therefore of government, is to resolve this conflict by delimiting the areas within which any individual may satisfy his needs, moral, economic or physical. Since society is the result of man's needs, organized society may only impose upon any individual such restrictions as are calculated to maximize or increase the general satisfaction of wants of the individuals within that society. Government must take positive action to remove the natural barriers to man's attempt to realize full development and must take such negative action as is necessary to prevent the continuance or establishment of artificial barriers to that same end.

A national industrial system of organization which is centered in one area, treating other areas as colonies or sources of raw material and markets for the finished product, must be analysed with the utmost care before concluding that it is for the public good. If full production and a ready market in the staple industry of the non-industrialized region is assured at all times, then it may be a reasonable conclusion.

This situation does not exist in Canada, however. Central Canadian industry has maintained its position in the market only because of high tariff walls. Because foreign enterprise can find no market in Canada, their Governments have erected tariff walls against Canadian agricultural produce. The profits of industrial production have accumulated in the hands of the central Canadian industrialist and financier and have been used for further capital extension in the home region, re-investment in the agricultural regions being limited to agricultural production—at

profitable interest rates—and to developing the distributing system. It is more than probable that this is the most profitable way for private enterprise to organize its productive and distributive equipment. The fact remains, however, that the western provinces, particularly Saskatchewan, have been left in an extremely vulnerable position, unable to accumulate wealth during the prosperous years, and having to seek charity elsewhere during the years of difficulty. It is the proper function of government to reduce so far as possible, the injurious effects of this artificial barrier to the satisfaction of the wants of this society. It is necessary to do this in order to overcome natural barriers and develop resources which will produce a diversity in the provincial economy in order to give it greater long term balance. It would be both inequitable and economically impossible to obtain the capital for such development out of taxation. The answer lies in the development of industrial activity as public ultilities beginning with those that are most wasteful in the hands of private enterprise, so far as this is possible within economic and constitutional limitations . . . and the reinvestment of the profits in further economic and social activity.

It is only with the foregoing in mind for a background that the status of The Government Insurance Office can properly be appreciated. It is not one more competing corporation. It is an instrumentality by which some part of the general objective may or should be achieved—to give insurance to the people for a price more nearly in line with its proper cost —to invest its reserves and surpluses in further industrial development— and to provide additional capital for investment in human beings as such in the form of more adequate social services.

(*b*) The Administration of an Obligatory Insurance Scheme

The Committee has concluded that any scheme introduced in Saskatchewan for the alleviation of distress among uncompensated victims of automobile accidents must be one in which all motorists are required to participate. In other words, the legislation effecting the plan involves the creation of a compulsory market. To permit private insurers to participate in any such scheme carries many serious implications. It means that a certain class of persons are compelled to pay tribute to a particular group of private enterprisers. It has often been argued that private insurers can not carry on business for any length of time unless 50 cents out of every premium dollar is retained by them for administration purposes and for profit. To allow individuals engaged in this wasteful form of protection to make a profit out of society's attempt to alleviate a social problem is unjust, uneconomical and wholly unreasonable. It would, moreover, in the absence of strict regulation lead to the growth of many small and unsafe insurance companies as enterprising business men became interested in obtaining for themselves a share in the market. Some may argue that this is a matter which might easily be remedied by regulation, the government being required to insist that only companies with large capital investment should be incorporated to carry on business in the field of compulsory insurance. This, however, would be discrimination in favour of existing companies and the establishment of a quasi monopoly in that field.

An illustration of the chaotic condition which can arise when private insurers are allowed a free rein in the making of premium rates, is found in the Ontario experience. In 1929 automobile rates in Ontario advanced as much as 25 and 50% and the pressure of public opinion compelled the government to appoint Mr. Justice Hodgins to investigate the situation. The rates were found not to have been defined by any scientific

formula but by what was expedient having regard to the condition of the competitive market. On the other hand, the Massachusetts experience indicates clearly that public control of rates under a compulsory automobile insurance plan administered by private companies is hardly satisfactory. Political pressure is exerted to reduce rates lower than experience can justify. The profit motive drives companies to urge rates which will yield a surplus over and above the actual cost of insurance.

In discussing the role of private insurers in a compulsory automobile insurance plan, the Tribune (England) under date of November 22nd, 1945, in an article entitled "Cleaning Up Insurance", said in part:

> "Nevertheless, the number of fraudulent insurance companies stimulated by third party insurance to fraudulent enterprise was a major scandal. Labour Ministers have no mandate to nationalize all insurance. It is, however, a sound Socialist principle that where the state creates a compulsory market, the State itself should undertake to supply the market. State insurance of third party risks would guarantee cheapness to the motorist and certainty of compensation to the injured pedestrian. It would reduce litigation and, no doubt, provoke depression at the Bar. But much litigation, especially of this type, is a luxury not in keeping with the austere spirit of the times."

Private insurance companies have traditionally led the opposition to any compulsory insurance proposal. In the Report of the Special Committee on Compulsory Insurance for Motor Vehicles to the Minnesota State Bar Association, in the year 1940, at page 12, we find the following:

> "The Companies, while opposed to the principle of the Massachusetts Act because they perceive in it a threat of state insurance (something experience does not seem to justify) centre their attack upon two of its administrative features."

In the 1941 Report by this same Committee, we read as follows:

> "Opposition has come principally from the insurance industry and its allies."

And again the same Committee, in their 1943 Report, state:

> "Active organized opposition to the Association's bill was directed principally by certain insurance companies, and while some members of the Legislature from farming communities report many farmers are opposed to compulsory insurance, the Committee feels that such opposition was to a great extent inspired by the Insurance Fraternity."

Apart from all other considerations, the portion of the premium dollar required for administration of a privately operated scheme would be much higher than one operated exclusively by a government agency. Acquistion costs and the necessity for each of the 244 companies presently operating in this province to make provision for certain fixed overhead cost would largely account for this. A government scheme can very easily utilize existing administrative machinery for the acceptance of applications and the collection of premiums.

The plan proposed by the Committee, however, could not be operated in a practical manner apart from a government agency. Since the receipt of benefits under the plan do not relate to a policy of insurance, it would prove very difficult to define the liability of any one insurance company in a given case, e.g., pedestrian struck by an unregistered car.

It is true that machinery might be worked out whereby insurers would be required to contribute to claims of pedestrians injured by hit-and-run drivers *pro rata* according to the gross premium income of each, and the introduction of the principle of absolute liability of motorists would provide a basis for claims being made to the insurer by injured parties not carrying insurance but the former would involve excessive administration expenses and the latter would present complicated questions relating to the rights of claimants, especially if the scheme were to be administered on a limited basis as the one now proposed for this province. The Committee is of the opinion that the scheme evolved by it achieves more effective results at a lower cost.

3.—CONSTITUTIONAL LIMITATIONS

The introduction of a compulsory insurance plan—the requirement that automobile drivers and owners insure with The Saskatchewan Government Insurance Office—the extent to which such a requirement may be made obligatory, are matters which immediately raise the question of the competence of the provincial legislature to enact the necessary legislation.

The provincial legislature derives *prima facie* jurisdiction to require every automobile owner and operator to insure with The Saskatchewan Government Insurance Office as a condition precedent to the granting of a licence to him by virtue of s. 92 of the British North America Act, 1867, the relevant clauses of which read as follows:

> "In each province, the Legislature may exclusively make laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,
>
> (2). Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
>
> (9). Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local or Municipal Purposes.
>
> (13). Property and civil rights in the province.
>
> (16). Generally all matters of a merely local or private nature in the Province."

It is clear that the regulation of highway traffic within the province is within the competence of the provincial legislature and under this authority the province may lay down conditions relating to the holding of a licence, suspension of a licence and the imposition of penalties for breach of the regulations: *Rex v. Corry,* 1932, 4 D.L.R. 399; *Provincial Treasurer of P.E.I. v. Egan,* 1941, 3 D.L.R. 306.

By the proposed legislation, the provincial legislature places upon the crown insurance office, an absolute duty to pay compensation to those who are injured in motor vehicle accidents on the highways of the province. It secures a civil right to the person required to contribute which enures to the benefit of himself, if injured, to his dependents and to a non-contributing third party who might be injured in an accident involving the contributor's vehicle. Such legislation falls within head 13 of S. 92 above quoted: *Workmen's Compensation Board v. Canadian Pacific Railway Co.,* 1919, 48 D.L.R. 218 at p. 218.

Moreover, in the words of Rinfret, C.J., (then Rinfret J.), in reference *Re Employment and Social Insurance Legislation,* 1936, 3 D.L.R. 644 at 664:

"Insurance of all sorts, including insurance against unemployment and health insurances have always been recognized as being exclusively provincial matters under the "Property and Civil Rights", or under the head "Matters of a merely local or private nature in the Province".

See also *Attorney-General for British Columbia ex rel College of Dental Surgeons v. Cowen et al,* 1940, 4 D.L.R. 755, affirmed 1941, 1 D.L.R. 565. The judicial committee of the Privy Council expressed the words of Rinfret J. when the same case was appealed as follows:

Per Lord Atkin at p. 686:

"There can be no doubt that *prima facie* provisions as to insurance of this kind, especially where they affect the contract of employment, fall within the class of property and civil rights in the province, and would be within the exclusive competence of the provincial legislature."—*Reference Re Employment and Social Insurance Act,* 1937, 1 D.L.R. 684.

The insurance may be regarded as a direct tax, additional licence fee or a fee imposed by the province upon vehicle owners and operators in return for services or benefits which The Government Insurance Office is required to provide in the event of highway accident, resulting in personal injuries.

Compulsory contribution to insurance funds have on occasion been described as taxes by the courts: *Workmen's Compensation Board v. Canadian Pacific Railway,* supra, and Duff, C.J., and Davis, J., in *Reference Re Employment and Social Insurance Act,* supra. Since, under the proposed plan, the contribution would be demanded from the person whom the legislature intends and expects to bear the ultimate burden, it is direct taxation and consequently within the competence of the provincial legislature to impose. (In further reference to the same point see *Turner v. Lower Mainland Dairy,* 1941, 2 D.L.R. 280.)

But whether the compulsory payment of insurance premiums under the plan be classified as direct taxation for the establishment of a fund out of which victims of automobile accidents on the provincial highways will be compensated, whether the premiums be regarded as additional fees for licences for the raising of revenue for the same provincial purpose, or whether the plan be merely regarded as a means of regulating the civil rights of persons using the provincial highways, it is within the power of the provincial legislature to enact the necessary legislation: *Shannon v. Lower Mainland Dairy,* 1938, 4 D.L.R. 82; *Re Natural Products Marketing Act, British Columbia,* 1937, 4 D.L.R. 298; *Turner Dairy Limited v. Lower Mainland Dairy Products Board,* 1941, 2 D.L.R. 280; *Tolton Manufacturing Company v. Advisory Committee,* 1944, 4 D.L.R. 273.

If, however, a matter falling under one of the heads of S. 92 of the British North America Act also falls under one of the heads of S. 91 which gives specific jurisdiction in relation to certain classes of matters to the Dominion Parliament, then the province may not legislate in relation to that matter unless such encroachment is merely incidental to otherwise valid provincial legislation and even in such case, Dominion Legislation, passed in relation to the same matter and repugnant to the Provincial Legislation touching thereon, must take precedence: *Citizens Insurance Company v. Parsons,* 1881, 7 A.C. 96; per Lord

Maugham at page 9: "There were, however, cases in which matters which were only incidental or ancillary to the main subject which was within the exclusive legislative powers of the Dominion Parliament were dealt with by the Provincial Legislation in the absence of Dominion Legislation. Since the year 1894 it has been a settled proposition that if a subject of legislation by the province is only incidental or ancillary to one of the classes of subjects enumerated in S. 91 and is properly within one of the subjects enumerated in S. 92, then legislation by the province was competent unless and until the Dominion Parliament chooses to occupy the field by legislation: *Attorney-General for Ontario v. Attorney-General for Canada,* 1894, A.C. 189. It is this proposition which from the nature of the case too often leads to difficulties." Reference re *The Debt Adjustment Act, Alberta,* 1937, 1943, 2 D.L.R. 1. But in addition to the specifically enumerated heads of S. 91 of the British North America Act, the Dominion Parliament is given power to legislate in relation to matters not specifically assigned to the legislatures of the provinces; viz—S. 91. "It shall be lawful for the queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces, and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that, (Notwithstanding anything in this Act), the exclusive legislative authority of the parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say:

2. "The regulation of trade and commerce."

The Dominion Parliament may not, under the authority of this part of the section, so legislate as to over-ride the jurisdiction of the provincial legislatures to legislate in relation to "Property and Civil Rights within the province". *Reference re Employment and Social Insurance Act,* 1937, 3 D.L.R. 644; *Reference Re Natural Products Marketing Act,* 1937, 4 D.L.R. 298.

Nor can the Dominion Parliament under the general powers or under authority of head 2 of Section 91 regulate particular businesses within the province: *Citizens Insurance Co. v. Parsons* (supra), and *Reference Re Natural Products Marketing Act* (supra).

The Dominion Parliament may provide for the incorporation of companies with certain status and powers for other than provincial objects under the authority of the general clause in S. 91 and may prescribe the fashion in which such companies should exercise those powers under the authority of head 2 of that section: *John Deer Plough Co. v. Wharton,* 1915, 18 D.L.R. 353. Since these companies must necessarily operate in one or more of the provinces, they are necessarily affected, directly or indirectly, to a greater or less degree, by all forms of provincial legislation and the extent to which provincial legislation may go in this respect has often come before the courts.

As previously indicated, the insurance business has long been recognized as a fit subject for provincial regulation within the province but in the present instance, two main questions emerge:

1. Can the province require a Dominion company to insure as a condition precedent to the granting of licences for the operation of its vehicles on provincial highways?

2. Is the requirement that every owner and operator of a motor vehicle obtain a Saskatchewan Government Insurance Office certificate of insurance with limited coverage as a condition precedent to the granting of a certificate of registration of a vehicle or an operator's licence to drive, such an interference with the right of Dominion Insurance companies to enter into insurance contracts in this province as to be outside the competence of the provincial legislature?

A short answer to the first of these questions is found in the judgment of the Privy Council in the *Workmen's Compensation Board v. C.P.R.* (supra) as follows, at 222:

> "The Compensation, moreover, is to be paid by the Board and not by the individual employer concerned. No doubt for some purposes, the law sought to be enforced affects the liberty to carry on its business, of a Dominion Railway company to which various provisions of Section 91 of the British North America Act of 1867 apply. But for other purposes with which the legislature of British Columbia had jurisdiction to deal under S. 92, it was competent to that legislature to pass laws regulating the civil duty of a dominion railway company which carried on business within the province, and in the course of that business was engaging workmen whose civil rights under their contracts of employment had been placed by the Act of 1867 within the jurisdiction of the province."

The answer to the second question requires more detailed consideration. In the incorporation of a company, the Dominion may confer upon it, as necessarily incidental to such incorporation, certain powers, e.g., to enter into contracts anywhere in the dominion, the right to sue and be sued in provincial courts, etc. A provincial legislature may not, under the guise of legislation in relation to property and civil rights within the province "derogate from the status and powers of a dominion company as such" and so, it cannot provide that a Dominion company shall take out a provincial licence as a condition of its doing business in the province. (*John Deer Plough v. Wharton,* supra) nor interfere with its powers of raising capital (*Great West Saddlery Co. v. The King,* 1921, 2 A.C. 91). However, per Viscount Haldane in the Great West Saddlery case, at page 24:

> "If the condition of taking out a licence had been introduced, not so as to affect the status of the Dominion company, but simply for the purpose of obtaining payment of a direct tax for provincial purposes, or of securing the observance of some restriction as to contracts to be observed by the public generally in the province, or of causing the doing, by that public generally, of some act of a purely local character only under licence, their Lordships would, for reasons already given, have been prepared to regard the condition as one which it was within the power of the province to impose."

The provincial legislature may not enact legislation whose effect is the prohibition of the exercise of the corporate powers of an insurance company incorporated under authority of the Dominion. Nevertheless, it may legislate in relation to local evils or local conditions which require amelioration or abatement even though such legislation incidentally affects the conditions under which Dominion companies operate, provided, of course, that such legislation does not in pith and substance amount to legislation regulating Dominion companies. *Lukey v. Ruthenian Farmers Elevator Company,* 1924, 1 D.L.R. 706, per Duff, J., at 713:

> "This is not to say that such companies are withdrawn from the operation of provincial laws dealing generally with matters that

may be embraced in whole or in part within the objects of the company. Dominion companies empowered to deal in intoxicating liquors for example are subject to provincial laws regulating or suppressing the sale of liquor; but such laws are not laws aimed at Dominion companies as such or at joint stock companies as such and do not in effect or in purpose prohibit or impose conditions upon the exercise of powers of Dominion companies which are essential in the sense that they are necessary to enable them in a practical way to function as corporations according to the constitutions imposed upon them by the Dominion."

and also the case of *Rex v. Arcadia Coal Co. Limited,* 1932, 2 D.L.R. 475, per McGillivray, at page 487:

> "A provincial legislature may enact laws, province wide, of general application (i.e., including the public generally) in respect of any of the subjects enumerated in S. 92 and in so doing may completely paralyse all activities of a Dominion trading company provided that in the enactment of such laws it does not enter the field of company law and in that field encroach upon the status and powers of a Dominion company as such."

A further statement in this regard is found in the Privy Council decision in *Lymburn v. Mayland (Security Frauds Prevention Act),* 1932, A.C. 318, where Lord Atkin said at 324-5:

> "There is no reason to doubt that the main object sought to be secured in this part of the Act is to secure that persons who carry on the business of dealing in securities shall be honest and of good repute, and in this way to protect the public."

Incidentally, the net has been drawn so wide as to cover the issue of shares by a public company, with the result that a company cannot issue its shares to the public unless for that purpose it employs a registered broker or salesman, or unless the company itself is registered. It is said that these provisions so far as they affect Dominion companies are *ultra vires* according to the principle adopted by this board in *John Deere Plough Co. v. Wharton,* 1915, A.C. 330, Cam. Vol. 1, 806; *Great West Saddlery Co. v. The King,* 1921, 2 A.C. 91, Cam. Vol. 2, 212, and *A.G. for Manitoba v. A.G. for Canada,* 1929, A.C. 260, Cam. Vol. 2, 534. In those cases there was a general prohibition to companies either to trade at all or to issue their capital unless the company was registered. The legislation was held *ultra vires* because the legislative powers of the province are restricted so that "the status and powers of a Dominion company as such cannot be destroyed" (John Deere Plough Co. Case), and legislation will be invalid if a Dominion company is "sterilized in all its functions and activities", or "its status and essential capacities are impaired in a substantial degree". (Great West Saddlery Co. Case.) It appears to their Lordships impossible to bring this legislation within such a principle. A Dominion company constituted with powers to carry on a particular business is subject to the competent legislation of the province as to that business and may find its special activities completely paralysed as by legislation against drink traffic or by the laws as to holding land. If it is formed to trade in securities there appears no reason why it should not be subject to the competent laws of the province as to the business of all persons who trade in securities. As to the issue of capital there is no complete prohibition as in the Manitoba case in 1929, and no reason to suppose that any honest company would have any difficulty in finding registered persons in the province through whom it

could lawfully issue its capital. There is no material upon which their Lordships could find that the functions and activities of a company were sterilized or its status and essential capacities impaired in a substantial degree." (See also *Colonial Building Association v. Quebec,* 9 A.C. 157.)

The number of motor vehicle accidents on the public highways of Saskatchewan is a matter of provincial concern. The number of victims who are unable to recover damages for the losses sustained, on the one hand, and the ruin occasioned negligent uninsured drivers who have a little property, on the other, is a provincial evil, and the establishment of a scheme by the provincial legislature to compensate such victims is an attempt to abate this local evil. The requirement that a policy of limited coverage taken out with The Saskatchewan Government Insurance Office does not "derogate from the status and powers of a Dominion company as such". Dominion insurance companies may sell accident, public liability and other forms of insurance to drivers and owners of automobiles in addition to or in supplement of the insurance provided under the plan as a condition precedent to their use of Saskatchewan highways. The principle is the same and the effect is the same as ameliorative legislation in the field of industrial accidents. The employer was always under a liability to pay damages to any workman who was injured by the negligence of his employer. This was an insurable risk. The introduction of absolute liability into this field by The Workmen's Compensation Act, R.S.S. 1940, Cap. 302, still enabled the employer to insure against this statutory liability. The introduction of The Workmen's Compensation (Accident Fund) Act, R.S.S. 1940, Cap. 303, took away this basis of liability and therefore rendered unnecessary, throughout the vastly greater part of the industrial world, the employer's entering into employer's liability insurance contracts. This certainly affected in fact the number of insurance contracts which Dominion insurance companies were able to write in that sphere. Yet no one has suggested that the Act is *ultra vires the* provincial legislature on this ground.

SECTION 2.—THE SOCIALIZED ACCIDENT INSURANCE PLAN.

1.—OUTLINE OF THE PLAN FOR SASKATCHEWAN.

Since the Committee can find no possible way for developing the concept of public liability insurance to the point where it might be made effective as a solution to the problem of uncompensated victims of automobile accidents, it has been driven, as indicated earlier, to a fresh approach. The pain and suffering of the victim can not adequately be measured in monetary terms. The economic consequences of disability are real—detrimental to the economic welfare of the individual as well as to society—irrespective of whose fault caused the accident. Economic loss consequent upon unemployment and industrial accident has become recognized as a factor in the cost of production in industry. Economic loss, consequent upon old age has become recognized as a factor in the cost of operating organized society. The Committee has concluded that the economic loss consequent upon the disability caused by motor vehicle accidents should properly be recognized as a factor in the cost of operating vehicles on a highway. All motorists should bear the cost and all victims should be compensated to the extent necessary to maintain a minimum standard of decency during the period of disability or re-adjustment.

2.—UNIVERSAL ACCIDENT COVERAGE.

In recommending a definition of the risk which should be insured against, the Committee has been faced with a two-fold problem. Firstly,

the scope of any plan must be wide enough to provide relief for persons whose injuries have been substantially caused by reason of the operation of a motor vehicle. On the other hand, however, the plan must not be so wide as to embrace risks which do not attach substantially to such operation or so wide as to throw open the door for fraudulent claims. The following extract indicates the difficulty which confronted the Columbia Committee in determining under what conditions it can be said that a motor vehicle causes damage.

"Cause the Basis of Liability.

"When can a motor vehicle be said to cause injury or death? This question is also presented in applying the law of negligence. The Committee suggests that a compensation law should use the word 'cause' allowing the administrative board and the courts to apply accepted legal principles in the process of interpretation. It would, of course, be possible to limit the liability of an owner to cases in which his motor vehicle caused the injury by collision, thus omitting such cases as those in which a motorist causes an accident by his glaring headlights or by forcing another off the highway.

"Incidence of Liability.

"In cases involving simply a pedestrian struck by a motor vehicle the owner of the motor vehicle must, of course, pay compensation. But where two motor vehicles collide, the problem is more complex. Here the Committee believes that it will be best to require each owner to compensate the occupants of his own motor vehicle, except the owner himself, who will look to the owner of the other motor vehicle for compensation."—Report by the Committee to Study Compensation for Automobile Accidents to the Columbia University Council for Research in the Social Sciences, at page 139.

The present Committee is of opinion that any plan introduced in this province should protect every person, subject to certain exceptions which will later be referred to, against loss from bodily injuries sustained directly and independently of all other causes, through accidental means and which bodily injuries are a result of:

(*a*) driving, operating, riding in or upon a motor vehicle on the public highway;

(*b*) collision with, being struck, run down or run over by a motor vehicle on a public highway.

It is suggested that the use of the words "run down" do not require that there should be actual contact between the vehicle and its victim and yet the imminence of impact must be so great as to make it inevitable unless the pedestrian, for example, takes drastic evasive action. If, as a result of such evasive action, a pedestrian injures himself, his injuries are just as much caused by the operation of the motor vehicle as if there had been actual impact. There would, however, be too many difficulties in the way of devising a broad system which would insure against loss from bodily injuries suffered by reason of the operation of a motor vehicle. It is feared that to widen the insuring provision to this extent would place what might well develop into an unfair burden upon the shoulders of the motoring public. It must be reiterated that during the early years, at least, the plan must develop along lines which will not, having regard to the average income of Saskatchewan residents, prove so costly that the resulting evil may be greater than the evil which it is sought to alleviate.

The losses in respect of which benefits may be made payable ought necessarily to be limited to those occurring within the sphere of effective provincial control. Because of obvious difficulties in the way of imposing duties and liabilities on the motorists involved in accidents outside the jurisdiction, the extra-territorial aspects of the insuring provisions are greatly restricted. It should be borne in mind moreover that it is the Saskatchewan motorist who is paying the bill. The Saskatchewan pedestrian injured on a foreign highway hardly can expect to receive benefits from the Saskatchewan fund. It is suggested, however, that supplemental coverage may be given,

(*a*) to the licensed driver;

(*b*) to the owner;

(*c*) to the passengers who, domiciled in the province, leave the province in an automobile properly registered in Saskatchewan;

by insuring such persons against loss sustained directly and independently of all other causes through accidental means while driving, operating, or riding in or upon a motor vehicle designated in an owner's certificate of insurance while such vehicle is being operated on any public highway in the United States or Canada.

3.—EXCLUSIONS FROM BENEFITS.

It is further considered necessary that certain groups of persons, otherwise falling within the insuring provision, should be excepted from any benefits. It may be argued that certain of the groups are not within the insuring provision at all. They are included for the purpose of emphasis and clarity. Firstly, persons operating or being passengers in a motor vehicle in respect of the operation of which no insurance premium is payable, should not be protected. A third person unfortunate enough to be injured through the operation of a motor vehicle not brought within the operation of the Act could, however, hardly be penalized because of his mistake in choice. Secondly, any person who by reason of the accident is entitled to benefits under The Workmen's Compensation (Accident Fund) Act is already protected and is entitled to receive benefits under that Act without the necessity of proving negligence on the part of his employer, provided that the Compensation Board is satisfied that the accident arose during the course of his employment. No special social problem is presented in such a case and therefore no benefits should be payable under the proposed plan which in itself is essentially merely an extension of The Workmen's Compensation (Accident Fund) Act. Thirdly, it is a well established principle at common law that no person should be entitled to benefits by reason of a crime or that he should be indemnified for any loss consequential upon such an act. The Committee has decided that this principle must be maintained and further, must be extended to exclude from receiving benefits those persons who, having completed the offence are fleeing from the scene thereof. It is hardly in accordance with the best moral tradition that any such person should be heard to argue that there was no causal connection between the injury and the offence or the fleeing. Fourthly, the owner of an automobile and the driver, who, while driving in a grossly negligent manner, although such conduct may not be criminal in degree can, of course, expect no compensation or benefits for loss which they wantonly incur by their own action.*

*Footnote: The term "gross negligence" connotes criminal negligence, objectively implying want of care which endangers human life and subjectively implying a state of mind which disregards the consequences.—Shortt v. Rush and British American Oil Company Limited, 1937, 2 W.W.R. 191.

Certain groups of persons are excluded from benefits because of their failure to observe what might be considered reasonable safety precautions. It is felt that publicizing these provisions will be effective to some degree in promoting safety. It would not be reasonable to exclude everyone who committed any breach whatsoever of The Vehicles Act but there are many offences against that Act which necessarily should be accompanied by more or less drastic consequences. Thus, the driver and passengers who are under the influence of liquor or drugs to the extent that the proper control of the vehicle is impeded, should be excluded. Similarly, persons who allow to be attached or who attach such things as toboggans, skiis, handsleighs or bicycles to any moving vehicle thus inviting danger should not recover nor should persons not riding on the portion of a vehicle designed to carry a load or who do not assume a position which reasonable people might consider ordinarily safe. Those persons who fail to comply with the law in respect of the registration of their vehicles or taking out a licence for themselves as drivers can not in justice be compensated for injuries they sustained as a result of their being unlawfully on the highway. And, by the same token, those who acquire a licence or certificate of registration by knowingly giving false information, thus escaping for the time being, the obligation to pay their fair premium, must not be allowed to recover.

4.—SCHEDULE OF BENEFITS.

The following benefits are recommended by the Committee:

1. In case of total disability, $25.00 per week or the average weekly earnings of the insured for the 12 months prior to the accident for a period of 12 months provided that the insured is unable to perform any duty pertaining to his own occupation and, if after the expiration of 12 months the insured is unable to engage in any occupation for wages or profit, such weekly payment should continue until the insured has received in all, $3,000.00.

2. In the case of partial disability or where partial disability follows total disability, the indemnity should be the difference between the average weekly earnings of the insured for 12 months preceding the accident and the amount he is able to earn after the accident for a period not exceeding 52 consecutive weeks with a maximum payment of $25.00 per week.

3. Although insurance only purports to indemnify the insured to the extent of his actual loss, the accident insurance plan is a social measure and must therefore pay attention to certain factors which might otherwise derogate from its effectiveness:

(*a*) Indemnity payable should be sufficient to prevent the weekly income of the recipient from falling below $10.00, regardless of whether or not the claimant was earning less than $10.00 weekly prior to the accident.

(*b*) The problem of determining the loss of income of a farmer as a result of his injuries presents difficulties both in principle and administrative practice. His net income is at all times difficult to ascertain. For the year preceding the accident, he may have suffered crop failure from drought and thus had no income. The accident may prevent him from putting in his crop which, if planted, might give every promise of being heavy. It is, therefore, suggested that a farmer's income for the 12 months preceding the accident should conclusively be presumed to have been $25.00 weekly.

(*c*) Unemployment insurance benefits under The Unemployment Insurance Act of Canada, 1940, are made conditional upon the ability and willingness of the insured to work. Being disabled by an accident disqualifies the beneficiary from benefits during the period of disability. The accident insurance plan should, therefore, make provision for these persons by indemnifying them to the extent of unemployment insurance benefits lost or $25.00 per week, whichever is the less.

4. Although a housewife is not ordinarily considered as a wage-earner and private insurers decline to cover housewives against loss of time, she should, nevertheless, be given an allowance of $12.50 per week for 6 consecutive weeks.

5. Additional payments for pain and suffering and out-of-pocket expenses to a maximum limit of $225.00 should be allowed in addition to the above.

6. A further allowance ranging from $250.00 for the loss of a thumb to $2,000.00 for major dismemberments such as loss of two hands, feet, or one of each, should also be made. (See Sec. 13 (3)(b) of Appendix No. 3.)

7. Allowances recommended in case of death are as follows:

(*a*) $3,000.00 to the primary dependant and $625.00 to each secondary dependant, to a limit of $5,000.00. *(1), (2).

(*b*) If the insured has no dependants and is 16 years or over, $1,000.00 to his estate.

(*c*) In all cases $125.00 in lieu of funeral expenses.

(*a*) Income as Basis for Indemnity.

The function of insurance is to protect individuals against any loss which might be incurred by them as a result of one or some of the many perils associated with human existence and a civilized society. It does not, and in fact, cannot purport to pay a sum greater than the value of the loss sustained. It is in essence a contract of indemnity. Insurance law has recognized the necessity of maintaining this principle. Wherever an individual enters into two or more contracts of insurance relating to the same insurable interest, it is required that the insurance companies should contribute proportionately to the extent of the loss. Were it otherwise, it would be good business for a man to build houses, buy automobiles, etc.,

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*Footnote:

(1) The term "Primary dependent" denotes:

(a) the wife or dependent husband of the deceased provided that at the time of the accident such person was not living apart from the deceased under circumstances which would disentitle her to alimony.

(b) If the deceased had no wife or dependent husband, such of the children of the deceased as are under 18 years or being over the age of 18 years are unable to maintain themselves without assistance by reason of physical or mental handicap.

(c) If there is no one qualified under "a" or "b", the dependent parent or parents of the deceased.

(2) The term "Secondary dependent" denotes such of the above persons as do not in the particular instance qualify as Primary dependents.

See Section 2 of the Act of the Saskatchewan Legislature passed on the recommendation of this Committee as The Automobile Accident Insurance Act, 1946—Appendix No. 3.

to over-insure them and take such little precaution that they would be destroyed and to collect the insurance.

It is true that the situation is somewhat different in the field of life and accident insurance. Since a pecuniary value can not be placed upon the loss of physical or mental faculties, life and accident insurance can not be classed as contracts of indemnity. Nevertheless, the weekly indemnity feature common to policies of accident insurance is a measure of the loss of time or income to the insured as a result of the injuries. There is, therefore, one aspect of this type of insurance which bears the indemnity feature. Here again, insurance law has found it necessary to maintain the principle of rateable contribution. In the same way, too, it would hardly be recognized as sound practice to allow a person to make a profit by remaining in bed or away from work. It is suggested that a great number of persons would not consider it incumbent upon them to regain their health as quickly as possible if a higher economic value were placed upon their inactivity than upon their activity in the process of production.

The proposed compensation plan for the victims of automobile accidents is a social measure. It is not a plan for making gifts to those who are injured. It necessarily is an attempt within limits to maintain a purchasing power of those persons who, otherwise, would be destitute. Twenty-five dollars a week is not a fabulous sum but it is felt that a person receiving this amount will at least be able to provide himself and family with some small degree of comfort. It is not argued that those whose income is less than $25.00 weekly are receiving an adequate income. But it is the function of labour laws and of improved techniques of production, and not the function of an insurance plan to increase this income. A scheme of social insurance would be confronted with the same problems as confront private insurers in over-insurance and which have been touched upon above. As the income of the worker increases, so will the weekly indemnity, payable to that worker in case of accident, increase to the limit of $25.00 weekly.

The indemnity scheme is more liberal than any accident insurance sold by private companies, for although the housewife usually produces no cash income, the plan recognizes that she performs a definite function in the productive process on the farm and her activity in any home increases the real income of the family. Again, one is confronted with the impossible problem of measuring in monetary terms the value to the family of the loss of her services. The proposal is, therefore, that in addition to other benefits, the housewife should receive weekly indemnity of $12.50 during six weeks of total disability. This does not purport to measure the value of the housewife. All it can do is to provide the means whereby the family may obtain the services of someone to perform routine domestic duties during the period of disability, and thus prevent the net income of the family from falling too sharply.

(*b*) Pain and Suffering and Out-of-Pocket Expenses.

The person suffering damage has long been entitled to recover damages for the pain and suffering consequent upon the bodily injuries caused by another's wrongful act. It is not suggested that the $225.00 which the plan proposes as a maximum allowance for pain and suffering and out-of-pocket expenses is a sufficient compensation for these two items. It is an attempt, having due regard to the type of injury, to provide a means whereby the insured may procure some of the necessary

comfort during the period of disabilitw without impairing the weekly indemnity provided as a replacement for the family income enjoyed prior to the accident.

At the moment of writing, various groups among the population and certain municipalities provide medical or hospital services of one kind or another for which the members or taxpayers in fact pay in advance. It is anticipated that many just complaints would be heard both from the beneficiaries and from the societies and municipal councils if benefits, made payable for or in lieu of hospitalization and medical care, were paid either to the municipality or to the beneficiary. The municipality or society can say that since these services were being provided, it would only be right that they, and not the insured, should receive these benefits. The insured, on the other hand, might reply that since he had prepaid his hospital or medical account, that he, and not the municipality or society, should be the recipient.

(*c*) Death Benefits.

Since the Committee has approached the problem of benefits through a social aspect, the plan is necessarily based upon the concept of family income. It has been decided that the economic problem arises only in cases where, in the event of death, the insured is survived by dependants. The housewife is certainly a dependant. Upon her shoulders rests the burden of maintaining the family and conducting its affairs. It is, therefore, proper that the greater portion of any death benefit should be payable to her, or, if the insured is a woman, to her husband in case he is dependent by reason of mental or physical disability. But the responsibilities of the surviving spouse vary with the number of children, and additional benefits should be provided in accordance with their number. Similarly, dependent parents should also be provided for.

It is recognized that though an insured has no legal dependants, there may nevertheless be many instances where the death of the insured brings a real loss to other persons. The scheme should therefore provide for the payment of some benefit to the estate of those who die without leaving legal dependants.

Since the standard limit of liability provided by private insurers is $5,000.00 for any one person in any one accident, it is felt that this amount, exclusive of other payments to which the insured may have become entitled before death, is a reasonable maximum limit of benefits payable to all dependents under the accident plan. It is further recommended that $3,000.00 should be paid to the wife or dependent husband and $625.00 to each of the dependent children and dependent parents of the insured, provided that if there are more than three of such dependent children and parents, the sum of $2,000.00 should be equally divided among them. But if the death of the insured makes orphans of his children, their need is greater and therefore increased benefits are recommended by allowing one child to be considered as primary dependant and additional children to be considered as secondary dependants. The total amount of benefits arrived at in this manner should be then divided equally among all the children.

(*d*) Children.

Critics of the accident insurance plan may complain that it does not adequately provide for children. Their argument may be justified within

limits. Under the proposed plan a child is on the same basis as an adult with respect of payment of weekly indemnity. If a child is working and receiving income for his labour, he is entitled to the same weekly benefits as the adult earning a similar amount. If a child is not working, he receives nothing and neither does the unemployed adult who is not in receipt of unemployment benefits at the time of the accident. A child receives the same amount as an adult for out-of-pocket expenses and for dismemberment. A parent who is supported by a child, regardless of that child's age, receives whatever amount any other dependent parent might receive under the plan. No allowance is provided, however, for a child who, himself, is a dependant and is under the age of 16 years and who loses his life as a result of the accident—other than funeral benefits. It is recognized that there may be some injustice in a provision of this nature where a parent can show that the continued life of the child would have been of pecuniary advantage to the parent. The law, however, has always jealously guarded the interests of infants and an illustration of the fear which is felt by placing a high valuation on the life of a child is found in Part V of The Saskatchewan Insurance Act where the amount for which the life of a child may be insured is greatly restricted.*

The Committee recommends that the benefits be eventually extended in regard to children in the following respects:

(*a*) Where a child though not working suffers disability likely to impair his earning power in the future, a lump sum may be provided to assist his rehabilitation.

(*b*) Where a child is a student, an assumed income might be used as a basis for indemnity.

(*c*) Death benefits may be made payable to the parents of a child under the age of 16 years according to a schedule proximating that prescribed for life insurance policies.

(*e*) Comment on Schedule.

In the opinion of the Committee the amounts specified in respect of the various indemnities represent the minimum. As experience develops, it is quite possible that benefits may be extended to cover incidental cases which now are not entitled to benefits and to increase the amount of indemnity in those cases already covered. It should be borne in mind that each increase along these lines will reduce more intensively the liability of the motorist to the injured party and the day may not be too far distant when the compensation paid to injured parties is considered to be so adequate that the liability of the motorist to the injured party may be eliminated completely as now is the case under The Workmen's Compensation (Accident Fund) Statute.

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*"No insurer shall insure the life of a child under ten years of age in any sum, or pay on the death of a child under ten years of age any sum, which alone or together with any sum payable on the death of the child by any other insurer exceeds the following sums respectively:

$ 100	if	the	child	dies	under	the	age	of 1 year
200	"	"	"	"	"	"	"	" 2 years
300	"	"	"	"	"	"	"	" 3 years
400	"	"	"	"	"	"	"	" 4 years
500	"	"	"	"	"	"	"	" 5 years
600	"	"	"	"	"	"	"	" 6 years
700	"	"	"	"	"	"	"	" 7 years
800	"	"	"	"	"	"	"	" 8 years
900	"	"	"	"	"	"	"	" 9 years
1,000	"	"	"	"	"	"	"	" 10 years."

Subsection (1) of Section 179 of The Saskatchewan Insurance Act, Chapter 121, R.S.S. 1940.

5.—SUBROGATION.

Under the accident insurance plan there would be a portion of injured individuals entitled to receive benefits, the cost of which should not, in the long run, be borne by the motoring public as a class. The Committee predicated its recommendations on the assumption that the motoring public should, as a class, bear the cost of those accidents the risk of which substantially attaches to the operation of a motor vehicle as such. Accidents resulting from gross negligence or wilful and wanton misconduct on the part of a motorist constitute a risk which actually relates to the personality of a motorist rather than to his vehicle. Again, there will be a proportion of accidents attributable to the operation of motor vehicles in respect of which the required premium has not been paid (this group would include non-residents as well as delinquent resident motorists). In addition, there will be a proportion of accidents involving hit-and-run drivers. In all the above instances, the Committee recommends that upon making any payment in respect of any injury arising out of an accident in which one of the above factors are involved, the insurance office should be subrogated to all rights of action of any person injured. There now arises out of the foregoing proposition, a more difficult question of policy.

1. If the insurer is required under the law to compensate all victims regardless of fault, should the insurer be required to recoup the amount of any payment from a motorist who has not paid his premium or from a hit-and-run motorist regardless of whether or not he was guilty of some negligence contributing to the accident? In other words, is there reasonable justification for imposing an absolute liability upon the motorist falling within this group for loss and damage caused by the operation of his vehicle to the extent of the benefits paid? The implications arising out of the acceptance of such a principle are far-reaching. As pointed out elsewhere, the development of the statute law in respect to the liability for automobile accidents has almost reached the point where the introduction of absolute liability would not be a far reaching step. So far as hit-and-run drivers and delinquent resident motorists are concerned, to compel them to reimburse the insurance office the amount of any benefits paid in respect of injury caused by such motorist might be considered to be a just penalty. It is a problem more difficult to justify in the case of the non-resident motorist from whom insurance contributions are not required. It is quite possible that such would have an effect upon the tourist trade as detrimental as would the requirement of a nominal premium from such person. In all cases, it would involve the application of two varying principles—absolute liability to the limit of benefits payable and liability based on negligence for all damage in excess thereof.

2. In the event of the abatement of the above principle, should the motorist be required to reimburse the insurer for benefits paid to gratuitous passengers only in the case where he (the motorist) has caused the accident by reason of his gross negligence or wilful and wanton misconduct? The liability of the motorist to a gratuitous passenger at the present time is defined by subsection (2) of Section 141 of The Vehicles Act, Chapter 98 of the Statutes of Saskatchewan, 1945, as follows:

> "141.—(2) The owner or driver of a motor vehicle, other than a vehicle ordinarily used for carrying passengers for hire or gain, shall not be liable for loss or damage resulting from bodily injury to or the death of any person being carried in or upon, or entering, or getting on to, or alighting from such motor vehicle, unless there has been gross negligence or wilful and wanton misconduct on the

part of the driver of the vehicle and unless such gross negligence or wilful and wanton misconduct contributed to the injury."

The reason for the introduction of this provision is found in the "Passenger Claims Racket" which embarrassed insurance companies some years ago. It was introduced in an attempt to protect companies against collusion between gratuitous passengers and their hosts. Where benefits are paid regardless of fault, there is no necessity for such a provision and it is suggested that the proof of ordinary negligence should be sufficient to enable the insurer to recover from a non-contributing motorist, the amount of any benefits paid in respect of injury to one of his passengers.

Section 23 of The Automobile Accident Insurance Act, 1946, enacted by the Legislature as Chapter 11 of the Statutes of 1946, which substantially contains the recommendations of this Committee gives the insurer a right of action against the non-contributing motorist or a hit-and-run driver which can be enforced only in accordance with existing laws. As the development of the plan becomes more complete so that the compensation paid in the form of benefits more nearly approaches adequacy as full indemnity for personal injury recoupment on the basis of absolute liability should be seriously considered.

In actual practice the insurer would take action against the wrongdoer in the name of the injured party and would sue for the full amount of damage done. After recovering judgment the proceeds would be divided between the insurer and the insured. If the full amount of the judgment is recovered the insurer would retain a sum equal to the benefits which it had paid out in respect of the loss suffered by the insured. If, on the other hand, the amount recovered is not sufficient to provide a complete indemnity for the damage, then a question of principle arises. That question is this: Should the insurer be entitled to retain all the proceeds of a judgment until it has been reimbursed to the full extent of benefits paid or, should any sum recovered be divided between the insurer and the insured in the proportion that each has borne the loss? The Committee has concluded that if the plan recommended by it is to be given a place among the laws whose aim is the amelioration of economic distress where such is consonant with justice and reason, choose a principle which is to the economic advantage of the insured. It is, therefore, recommended that the second of the two alternatives above referred to should be adopted. Where, after having become subrogated to the rights of an insurer, the insurer recovers an amount which is not sufficient to fully indemnify the insurer as well as to indemnify the insured or his estate to the extent that the total damage suffered exceeds the benefits paid in respect of the loss suffered by him, the net amount recovered should be divided between the insurer and the insured in the proportion to which benefits paid bear to total damage suffered.

6.—REDUCTION OF THE LIABILITY OF THE MOTORIST TO THE INJURED PARTY.

Since, as will later appear, the automobile insurance plan requires every owner and operator of a motor vehicle to pay the prescribed premiums or contributions, the motorist must be given the fullest possible protection. It is, therefore, concluded that a person receiving injuries under circumstances entitling him to benefits must make his claim to the insurer for those benefits. No right of election can be permitted the injured party as between claiming for benefits or suing the motorist for damages. Having made his claim, however, he should be permitted to

pursue the motorist for whatever damages have been suffered in excess of the amounts which the insurer is lawfully entitled to pay in respect of those injuries. In other words, the liability of the owner or operator of a motor vehicle for damages for personal injuries in respect of which benefits are payable to any person should be reduced (in direct suit or by way of contribution or any other way whatsoever) by the amount which the insurer is entitled to pay to any person in respect of those injuries. The extent to which such liability is reduced should not be restricted to sums actually paid but to the maximum amounts which the statute authorizes the insurer to pay in each particular case, e.g., if the insurer is entitled to pay $225.00 for out-of-pocket expenses in respect of a particular injury but under the circumstances of the case, it is considered that $200.00 is adequate under this head, then the liability of the motorist to the injured party in respect of this item should be reduced by $225.00. The reason for this is obvious. Such a provision prevents the court from saddling the motorist with the additional burden in those cases where the discretion of the insurance office has been exercised in the payment of a sum less than the statutory maximum. It is a safeguard against recrimination.

Nor should the injured party be permitted to evade this restriction on his right of action by disentitling himself to benefits by deliberately breaking one of the statutory conditions of payment. This again, is for the protection of the motorist. No hardship will result to the individual who innocently breaks a condition, for provision is made whereby relief may be given in such cases for imperfect compliance with the conditions.

7.—ACCIDENT REPORTING.

The efficacy of the plan is dependent in no small degree upon the promptness with which accidents are reported. There is, under the proposed plan, a greater incentive for persons to report accidents than there is under the financial responsibility law. As Feinsinger has pointed out in his article on The Operation of Financial Responsibility Laws appearing in Law and Contemporary Problems, Vol. III, No. 4, October, 1936, at page 525, one of the great flaws in the practical operation of the financial responsibility law is the failure of many persons, either because of early settlement or because of the obvious financial irresponsibility of the wrong-doer, to report accidents and to carry actions through to judgment.

As with other aspects of the plan, the Committee is most in favour of utilizing forms and persons already authorized for the purpose under The Vehicles Act in order to develop its reporting system. A duty must be placed upon every proper person who might have knowledge of an accident to report the matter. It is not, of course, expected that every one of the individuals required, i.e., persons involved in the accident, persons having knowledge, owners, doctor attending the victims, garage-keepers—will all report the same accident but the insurer must have the authority to require reports from these people where that is necessary. It is of prime importance, however, that those persons involved and especially those injured should report to the insurance office and to the police. In this manner, the plan again demonstrates that it carries with it certain safety features, for it is suggested that one of the conditions upon which the recovery of benefits ought to be dependent is that where the claimant is a person required to provide any of the foregoing reports, he must comply in every particular. It is thus expected that the percentage of accidents reported to the police will increase demonstrably, and thus that the information available to the traffic authorities will increase

providing more adequate knowledge as to the cause of accidents and as to the record of individual drivers. The plan requires the insurance office to be notified not only of accidents involving personal injuries but also those in which property damage alone results. The reason is this, that as indicated by the United States Department of Agriculture Survey, the small proportion of motorists, who are accident repeaters, cause a large proportion of deaths. The threat to the highway public of any one driver can only be gauged by the frequency of accidents in which he is involved and whether or not it is persons or property which are damaged in one accident is of no consequence. In other words, it is the number of accidents rather than the nature of the damage which best indicates the responsibility of any motorist.*

Statutory Conditions.

The statutory conditions governing the payment of benefits should, so nearly as may be, approximate the conditions which experience has taught to be most effective in the field of accident insurance.

Each claimant after completing any report required of him should directly notify the insurer of his intention to claim benefits. In order to relieve possible congestion, the duty to make claim is in the first instance placed upon the shoulders of the insured, if he is merely injured, and the primary dependant in case of death. Other persons interested, however, must not be debarred from the right to recover should such person fail or be unable to complete the necessary proofs and it is suggested that condition 2 of The Automobile Accident Insurance Act, 1946, appended hereto, (an adaptation of the accident condition now embodied in Part 7 of The Saskatchewan Insurance Act), adequately provides for these requirements.

Statutory Condition 5 also appearing in The Automobile Accident Insurance Act is an adaptation of an existing condition but since the present plan suggests that benefits be based upon loss of income rather than upon loss of time, the phraseology is necessarily modified accordingly.

8.—DETERMINATION OF DISPUTED CLAIMS.

Because the plan requires anyone receiving injuries under conditions which *prima facie* entitle him to claim insurance and takes away from such person the right to sue the person causing injuries to the limit of the benefits payable, it is essential that the claimant should have the right to appeal to an indepedent authority in case of disagreement between himself and the insurer. The Committee might have adopted the principle governing the determination of disputes under The Workmen's Compensation (Accident Fund) Act. There, the same board which assesses the amount of contribution, determines all questions relating to the payment of compensation and no appeal whatsoever lies to any other authority.

Another possible solution which was seriously considered was the establishment of an administrative tribunal with power to hear all appeals relating to claims for benefits under the plan. Such a board would not be without precedent and it has certain advantages. An administrative body is not restricted within the narrow confines of judicial authority. It may examine each individual case on the basis of its particular merits and may bend this way or that in order to achieve substantial justice. Moreover, it is the usual practice to relieve such tribunals from the

* See page 16, infra.

obligation of following the strict rules of evidence and they may use such discretion as reason might advise in deciding what is and what is not evidence of an alleged fact.

The Committee finds two more or less serious objections to the establishment of such a board for the arbitration of disputed claims. Firstly, it does not believe that persons dissatisfied with the actions of one arm of the public administration should be required to appeal from that decision to another body with similar interests and a similar approach. It is very anxious that everyone be given the fullest opportunity to have his claim properly settled. Secondly, the Committee concludes that such a tribunal would be too expensive to maintain at the present time. It would require a number of well qualified, and hence highly paid members, as well as a staff of clerks, etc. It would be preferable to use the moneys required for this upkeep as a saving to the motorist or to increase the benefits offered.

It believes that the determination of disputes according to the principles of law will, in the long run, perhaps be most just to all concerned. It is necessary, however, that actions in court be conducted in a most expeditious and economical manner. It is, therefore, concluded that all actions for the recovery of benefits should be tried in the District Court which sits regularly and has on the whole provided reasonably adequate service.

The Committee recommends that on the determination of any question, no award of costs should be given to either party. Many protests will be raised against this recommendation. It will be said that it is unfair that the party who wins the decision should have to pay his own costs. It will be charged that the successful claimant will have to pay the legal expenses out of the moneys recovered.

In reply, it is first contended that the principle which places the whole burden of costs upon the person who in the long run is unsuccessful in a law suit is wrong. It is predicated on the archaic and out-worn assumption that every one knows the law and that the unsuccessful party therefore should not have brought his action in the first place. Trace any law suit through from the trial judgment to the final appeal. More often than not, there will have been almost as many judges in favour of the contentions of the unsuccessful party as there were in favour of the successful one, e.g., the trial judge finds for the plaintiff . . . three out of five appeal judges find for the defendant and on appeal to the Supreme Court of Canada, three out of five find for the plaintiff. The plaintiff thus gets judgment, although in the three courts, five out of eleven judges have thought the defendant to be in the right. The defendant must pay the costs of all proceedings from the time the action was undertaken until final judgment in the Supreme Court. Costs in the District Court are low and it is felt that the integrity of the legal profession must be relied upon not to take advantage of claimants. The principle of not awarding costs is not new. It has always maintained in penal proceedings. It is given limited operation under the 1943 Saskatchewan debt legislation.

The Committee has recommended that the District Court should exercise exclusive jurisdiction in all actions for benefits against the insurer and that no appeal should be taken to any court except to the extent that appeals from provincial courts may be taken to the Supreme Court of Canada under The Supreme Court Act. This conclusion has not been arrived at without some hesitation. There is much to be said on both sides of the question. The Committee justifies its position on the following grounds:

1. The right to appeal by a litigant who has had his day in court is not an element of natural justice.

2. It is essential that there be a minimum of delay between the date of the accident and the payment of benefits.

3. It is suggested that the right to appeal is more advantageous to future litigants than to the parties immediately involved. An appeal decision gives some guidance to an inferior court in future actions. To the litigant involved even though he is successful and even though he be allowed his costs, it is usually necessary to make a substantial payment out of his own pocket for the work done by counsel. The dissenting judgments frequently handed down indicate the obscurity with which many aspects of the law are clothed, making it difficult for even judges of appeal to define them precisely. It is a fair question whether the uncertain hope that an inferior court judgment will be reversed is sufficient justification for the expenditure of time, inconvenience and money involved in an appeal.

4. The Committee has gone on record as opposing the principle of awarding costs to the successful party. If this principle is sound as it relates to courts of original jurisdiction, it must be made applicable to courts of appeal. This would mean that to allow appeals under The Automobile Accident Plan, the wealthier claimant and the insurer would alone be free to pursue an appeal. Others would find it necessary to mortgage any benefits to which they might become entitled and thus the whole purpose of the scheme would become frustrated.

On the other side of the picture, it must be admitted that the right to appeal to a higher court lends uniformity to the decisions of the inferior court. It is contemplated that the District Court judge will arrive at his conclusion according to the principles of law, but without the right to appeal, there is no other adequate technique for preventing the original court making its judgment contrary to the evidence. Potentially, every District Court judge becomes an all powerful arbiter, free to exercise discretion and possibly discrimination.

It is possible that because of the above disadvantages, it will be found necesary to modify the original recommendations of the Committee. In such event it must be emphasized that the form of appeal should be kept simple. It should properly be taken to a King's Bench judge in chambers, provision being made for his reviewing the transcript of evidence taken in the court below and for the pleadings, etc., to become available for the purposes of appeal.

9.—PAYMENT OF PREMIUM CONDITION PRECEDENT TO REGISTRATION.

Pursuant to the Committee's conclusion that loss for personal injury caused by the operation of a motor vehicle is properly chargeable to the cost of automobile operation, it has recommended that each person required to obtain a Certificate of Registration or Permit for a motor vehicle or an Operator's Licence or Chauffeur's Licence, etc., under The Vehicles Act, must, as a condition precedent to the issue of any of the above, make application and pay the premium for accident insurance. The application form may be simple and during the initial stages of operation it might be preferable to combine the application for insurance with the application for licence. Contributions must be required from operators as well as owners because a certain degree of the risk attaches

to the human element as well as to the mechanical. Moreover, a surcharge system of rating, described below, is directed more particularly to the control of operators rather than owners, i.e., although there may be some persons who may be described as careless owners through failure to keep their cars in repair or by being imprudent in the choice of persons to whom they lend their automobiles, there is a minority of drivers who are easily recognizable as chronically careless. By requiring operators therefore to contribute, the burden is more equitably spread over the motoring public and the careless minority may more easily be controlled. The basic premium may be required of the motorist when he tenders his application—together with the appropriate licence fee and completed application for registration or licence.

If the licensing authority, i.e., The Highway Traffic Board, considers an individual fit to own or drive a motor vehicle the insurance office should not interfere with the jurisdiction of that authority by denying insurance. Should the application disclose that an individual is suffering from physical or mental handicap of a nature which suggests that he is more than ordinarily hazardous, he should, too, be required to complete a supplementary application form setting out the details of his affliction. The issue of a licence should not be delayed on these grounds alone.

10.—RATING.

The risk attaching to a motorist does not vary in degree with his income. As a matter of fact, it is quite probable, though not demonstrable, that those in lower income brackets are a greater risk because of the older and less well-equipped vehicles operated by them. Some attention has certainly been paid by the Committee to fixing rates according to ability to pay as between classes but the Public Service Vehicles, in respect of which higher premium rates are charged, are subject to greater degrees of exposure by their very nature, and this is one of the large factors utilized in the fixing of rates rather than the economic status of their owners. The motorist, in paying his premium, is not merely paying for benefits to which he may become entitled, but also for the benefits which may become payable to his passengers or a pedestrian or to the passengers of some other vehicle whose economic status can not logically be predicted and classified at the time of his becoming subject to the payment of premium. He is, moreover, paying for protection from legal liability to the limit of the maximum benefits payable to any person who might otherwise have a right of action against him as a result of any accident.

The only factors that ought therefore to be taken into consideration when classifying for the purpose of rating are:

1. In the case of operators:
   - (*a*) Whether the operator drives a vehicle as a means of livelihood, for clearly if he does, he is longer exposed and therefore a greater risk.
   - (*b*) Whether he is an experienced operator or one who is driving on permit, being under-age or a learner.
   - (*c*) Whether he has been classified as a less careful driver by the fact that he carries a red or blue licence.
2. In the case of the motor vehicle:
   - (*a*) Whether it is a vehicle used for commercial purposes, for if it is, exposure will be greater.

(*b*) Whether, being a commercial vehicle, it is used for the carrying of passengers or only goods, for if the former, the risk attaching is much greater in respect of persons being carried.

(*c*) The approximate weight of the vehicle, for although a large vehicle is not in more accidents probably than a smaller one, yet because of the greater weight, the damage done in one accident will be greater.

Having thus classified the operator and the vehicle, it becomes a question of determining the relative probability of the vehicle in each class being involved in an accident causing bodily injuries in order to fix the rates.

The actual rate structure for any new class of insurance must necessarily be a rough estimate because of the lack of sufficient detailed experience of the frequency and extent of damage arising from the type of loss insured against. The rates now in force under The Automobile Accident Insurance Act were developed with the following factors in mind:

1. Public liability rates reflect the experience where the insurer's liability to pay is contingent upon an accident being caused by the fault of the insured, but such rates may indicate a starting point for the determination of rates for a class of insurance where the liability of the insurer is more or less absolute.

2. Because the public liability insurer's liability is dependent upon the fault of the insured, the insurers of any two automobiles involved in an accident together would never have to pay 100% of all loss from personal injury to the persons in each car who were injured. The effect of The Contributory Negligence Act is that motorists become co-insurers, i.e., "A" suffers loss of $250.00; "B" suffers loss of $150.00; each driver is held to be 50% negligent; "B's" insurer pays to "A" $50.00; "A's" insurer pays nothing; "A" therefore suffers a personal loss of $200.00 and "B" suffers a personal loss of $150.00. The Contributory Negligence Act thus relieves the insurer of making a complete indemnity as was the case at common law, but even there the insurer would be required to pay indemnity in no more than 50% on the average of the accidents in which its insured's cars were involved.

3. The accident insurance scheme provides indemnity for losses caused by upsets and other non-collision accidents which are outside the scope of public liability insurance.

4. The proposed plan provides indemnity for the passengers of automobiles who are injured as the result of the fault of the operator of some other vehicle other than a motor vehicle and public liability insurance does not.

5. The accident plan provides compensation for the victims of hit-and-run drivers.

6. The basic public liability rate does not include passenger hazard. In most of the Canadian provinces, an insurer would be under no liability to pay anything under this head because a gratuitous passenger must prove gross negligence or wanton and wilful misconduct as a condition precedent to his right of recovery from the host and in the vast majority of cases such conduct would be construed as a breach of condition of the insurance contract or a violation of the law, thus vitiating the policy and making insurance moneys unavailable for the satisfaction of the judgment.

The accident insurance plan compensates everyone who suffers loss from personal injuries which results from the operation of a motor vehicle except in certain cases where there is not a running down.

7. Under the accident insurance plan, there are no limits to the amount which may be paid in respect of the injuries suffered in one accident.

The above is an outline of the factors which operate to make rates for accident insurance higher than public liability rates. The following are factors which tend in a downward direction.

8. The state insurance office by utilizing the existing administrative machinery and co-operating with other government agencies is able to eliminate or reduce to a negligable amount the payment of commissions for the obtaining of applications for insurance.

9. The cost of adjusting claims may be reduced by having settlements negotiated and supervised directly by the office.

10. In so far as private passenger cars are concerned another factor operates in a downward direction. The public liability experience of certain classes of motor vehicles has been profitable while the experience with other classes has been unprofitable. Some of the cost of maintaining the service for this latter group has thus come from the premium dollars paid by the former group. The Committee proposes that such conditions should be eliminated as far as possible and that the premium for each class of vehicle should be a reflection of its experience.

11. Some part of the cost of operation of the plan is charged to operators and this, of course, reduces the amount which would otherwise be payable by owners.

In striking rates, therefore, each of the above factors must be considered and weighed. The Committee has been hampered in recommending specific rates for each class of vehicle because of the difficulty in accurately measuring the above factors. The Committee has, however, built a rate structure with the assistance of available statistics which it believes will yield adequate revenue to maintain the fund on a self-sustaining basis. They will, no doubt, have to be revised in the light of some months experience and from time to time, but level rates can not be expected until at least December, 1948, (in the case of Saskatchewan.)

Changing conditions require flexibility of rate fixing. It is, therefore, suggested that basic rates should be established by regulation for each class of owner and driver. They should, however, be fixed before the 31st day of December preceding the licence year in respect of which such rates are to be charged. This will give the public notice, in advance, of the rates. (See Appendix No. 5, Schedule of Rates.)

The driver or owner who might be classed as "careless" creates a risk which can hardly be described as indigenous to motor vehicle operation. Similarly, certain types of physical and mental handicaps increase to more than an ordinary degree the risk of accident. It is hardly fair to expect the average motorist to contribute to a risk which is not created by his own presence on the highway. These special classes of owners and drivers must be required to pay a premium additional to that fixed by

Footnote: For analysis of traffic accidents, their cost on the basis of benefits payable under the accident insurance plan and an estimate of the cost of operation during the first years, see exhibits "A" to "I", Appendix 4.

the basic rate. The amount of this additional premium is wholly an underwriting problem and the insurer should be given as much freedom as possible in ascertaining the facts and in fixing the rates in accordance with the facts as found by it.

This places great power in the hands of the insurer, and in certain cases the surcharge may be so high as to deter the applicant from paying it, thereby keeping him off the road. The Committee was thus faced with the necessity of devising some means whereby the motorist may appeal the rate fixed by the insurer. Rating is a technical problem and it is felt that the appeal tribunal should be one composed of individuals with the necessary technical background with freedom to obtain evidence in whatever manner seems most convenient. The hearing should be in the nature of an administrative review with power in the board to make a final decision and such decision should be final.

11.—SAFETY FEATURES OF THE PLAN.

Some of the provisions already outlined in connection with other aspects of the plan contain certain elements conducive to highway safety.

1. Any person who is injured while pursuing some more than ordinary careless course of conduct is excluded from receipt of benefits, e.g., a person who is guilty of gross negligence or wilful misconduct—a driver or passenger who is so intoxicated that proper control of the vehicle is impaired—a person who causes or permits such items as skiis, sleighs, bicycles, to be drawn by a vehicle. These provisions are not expected to be effective in themselves but given adequate publicity, they will at least tend to the direction of safety.

2. The incentive given to the injured person and the authority given to the insurer to demand adequate and proper information regarding accidents will no doubt increase the number of accidents reported. This, in turn, will assist the traffic authorities to determine more accurately the causes of automobile mishaps against which new precautions may be devised. It will assist those authorities and the police in the enforcement of traffic regulations. It will provide statistics for the establishment of new and improved reclassifications.

3. The knowledge on the part of the driver that in the event of conviction under The Vehicles Act, leading to the issue to him of a blue or red licence, which would also be accompanied by the requirement of a higher premium before the new licence is issued, is expected to become well known and consequently to be reflected in the conduct of automobile drivers.

4. The system of surcharging premiums is expected to be the most effective instrument in the hands of the insurer as a means of controlling driving practices. Each motorist will be required to pay a price if he wishes to enjoy the luxury of carelessness and provision should be included in the enacting legislation that upon failure of a motorist to pay a surcharge in accordance with the written notice of the insurer or pursuant to an order of the Rates Appeal Board, his licence should forthwith be suspended—leaving no discretion in the matter either to the insurer or to the licencing authority.

5. In addition to the above, the insurer must be given authority to recommend the suspension or cancellation of any motorist's licence or registration certificate.

It is felt that the Automobile Accident Insurance plan is primarily an insurance scheme and that the suspension of a motorist's privileges should be left so far as practicable to the jurisdiction of the traffic authorities.

It is recognized that safety is largely a matter of education. It is suggested that the insurer should actively participate in the promotion of safety practices on the highway. This should be done in one of several ways or by a combination of all:

(*a*) The insurer might desire to make a grant to the traffic authorities to encourage the establishment and development of a safety division;

(*b*) Grants or prizes might be made to schools to encourage education in practical traffic regulation so that youngsters will know what is the right thing to do while on the highway, as well as they know the alphabet;

(*c*) Prizes may be offered to several groups and municipalities in competition to reduce accident frequency in the various districts.

Notwithstanding the above the Committee nevertheless strongly urges the provision of an adequate number of traffic officers to enforce the rules of the road and to provide an adequate force for the proper examination of "would-be" drivers.

Pursuant to the recommendations of this Committee, the Legislature of Saskatchewan during the 1946 session has enacted The Automobile Accident Insurance Act, 1946. Its appearance in the sphere of public activity has been accompanied by very few additions to the staffs of those branches of the public administration with which it is concerned. It is, of course, too early to determine the adequacy of the legislation to meet the problem for which it was designed but it is significant that four months after the date of the law becoming effective, no dispute between the Insurance Office and any injured person has yet found its way into the court. The policy of the Insurance Office has been to administer the Act according to its spirit rather than to the strict technical meaning of the words employed. As has been indicated in earlier sections of this report, the Committee is conscious of certain inadequacies and it considers that after a little experience, the legislation should be widened as there indicated. Of course, whether the results in terms of alleviation of human distress justify the financial cost to the motorist is a question which will be answered in the mind of each individual according to his own scheme of social values.

Appendix No. 1

Scale of Benefits under The Columbia Compensation Plan.

"F. Scale of Benefits: The Committee has drafted the following schedule of benefits based on the workmen's compensation laws of New York and of Massachusetts.

(1) Medical Benefits: The cost of medical care is paid in all cases regardless of the duration of disability (this follows the New York law, in Massachusetts such cost is paid only during the first two weeks of disability and in unusual cases).

(2) Waiting Period: No compensation is paid for the first week of disability.

(3) Weekly Wages: Compensation is based on weekly wages. For employed persons these are calculated as under the workmen's compensation law. For business and professional men, profits take the place of wages in the calculation. For persons temporarily unemployed, wages are calculated by reference to the last period of steady employment. For housewives, wages are assumed to be those paid for similar work at the time and place of their occupation. For permanently unemployed persons, for unemployed minors of nineteen and under, and for students of over nineteen, the minimum wage of $8.00 is assumed. (New York, $8.00; Massachusetts, $9.00).

(4) Permanent Total Disability: The injured person receives two-thirds of his weekly wages during the continuance of the disability.

(5) Temporary Total Disability: The injured person receives two-thirds of his weekly wages during the continuance of his disability.

(6) Permanent Partial Disability: As in workmen's compensation, the plan includes a schedule listing various types of dismemberments or loss of use of members. In respect of each an injured person is entitled to receive two-thirds of his average weekly wages for a specified number of weeks, adjusted roughly to the seriousness of the case; if the injury is not covered by the schedule he receives two-thirds of the difference between his wages before and after the accident. In cases of unemployed minors and in other cases where it shall be equitable, the compensation board may estimate the wages which the injured person would have received from time to time.

(7) Temporary Partial Disability: During the continuance of temporary partial disability the injured person receives two-thirds of the difference between his wages before and after the accident.

(8) Disfigurement: For serious facial or head disfigurement or other disfigurement impairing the earning power of the injured person, he receives a proper and equitable amount, not to exceed $3,500 (New York only).

(9) Death: Compensation in death cases is as follows:

(*a*) Funeral Expenses: Funeral expenses are paid in all cases, not exceeding $200 (New York, $200; Massachusetts, $150).

(*b*) Earners With Dependents: The dependents receive compensation as provided by the workmen's compensation law of the state. This includes earners temporarily unemployed.

(*c*) HOUSEWIVES: Members of the family of the deceased living in her household receive a minimum of $500 and a maximum of $1,500.

(*d*) CHILDREN: For unemployed children of nineteen and under, the parents or the surviving parent receive a minimum of $500 and a maximum of $2,500.

(*e*) STUDENTS: For unemployed students over nineteen, compensation is paid to the wife and children or to supporting parents, as in the case of employed persons, but with an assumed wage of $10 a week.

(*f*) EARNERS WITHOUT DEPENDENTS: No compensation is paid with respect to earners without dependents, except the amount provided for the funeral.

(*g*) UNEMPLOYED PERSONS: No compensation is paid with respect to permanently unemployed persons, except the amount provided for the funeral.

(10) MAXIMUM AND MINIMUM: The maximum and minimum compensations payable for different kinds of disability are in addition to those already stated as follows:

Nature of Disability	Maximum per week		Minimum per week		TOTAL MAXIMUM			
	N.Y.	Mass.	N.Y.	Mass.	Weeks		Amount	
Permanent Total	$ 25	$18	$8	$9	500	(Mass.)	$4,500	(Mass.)
Temporary Total	25	18	8	9	500	(Mass.)	5,000	(N.Y.)
					.....		4,500	(Mass.)
Permanent Partial	20	18	8	.....	.....		4,500	(Mass.)
Temporary Partial	20	18	8	.....	.....		4,000	(N.Y.)
Death	100 a month	.....	.....	.....	400	(Mass.)	6,400	(Mass.)

Appendix No. 2

THE VEHICLES ACT, 1945 — PART VI

Financial Responsibility of Owners, Operators and Chauffeurs.

Applications

144.—(1) Nothing in this Part shall prevent the plaintiff in any action from proceeding upon any other remedy or security available at law.

(2) This Part shall only apply to offences and violations of law committed, and to convictions and judgments arising out of motor vehicle accidents occurring, and to motor vehicle liability policies issued or in force, after the first day of May, 1933. R.S.S. 1940, c. 275, s. 143.

Suspension of licence and registration for failure to pay judgment

145.—(1) In case:

(*a*) a judgment is rendered, by any court in Canada, for damages on account of the death of or injury to any person, or on account of damage to property in excess of $50, occasioned by a motor vehicle; and

(*b*) the person against whom the judgment is rendered fails to satisfy the judgment within thirty days from the date upon which it becomes final by affirmation on appeal or by expiry, without appeal, of the time allowed for appeal;

the board shall, upon receipt of a certificate of the judgment, suspend the operator's or chauffeur's licence issued to the person against whom the judgment is rendered and the registration of every motor vehicle registered in his name.

(2) Every such licence and registration shall remain so suspended and shall not at any time thereafter be renewed, nor shall any new licence be thereafter issued to or registration permitted to be made by the person liable on the judgment, until:

(*a*) it is satisfied or discharged, otherwise than by a discharge in bankruptcy, to the extent of $5,000, exclusive of interest and costs, for the death of or any injury to one person in one accident and subject to that limit for each person so injured or killed, to the extent of $10,000 exclusive of interest and costs, for the death of or injury to more than one person in one accident, and to the extent of $1,000, exclusive of interest and costs, for damage to property in any one accident; and

(*b*) the person so liable gives proof of his financial responsibility for future motor vehicle accidents in the manner required by this Part.

(3) If, after proof of financial responsibility has been given, any other judgment against such person, for any accident which occurred before such proof was furnished and after the thirtieth day of April, 1933, is reported to the board, the board shall suspend the operator's or chauffeur's licence issued

to such person and the registration of every motor vehicle registered in his name, and such licence and registration shall remain so suspended until the judgment is satisfied and discharged, otherwise than by a discharge in bankruptcy, to the extent set out in subsection (2).

(4) The Lieutenant Governor in Council, upon the report of the board that a state has enacted legislation similar in effect to subsections (1) and (2) and that such legislation extends and applies to judgments rendered and become final against residents of that state by any court of competent jurisdiction in Saskatchewan, may, by order declare that the provisions of the said subsections shall extend and apply to judgments rendered and become final against residents of Saskatchewan by any court of competent jurisdiction in such state. R.S.S. 1940, c. 275, s. 144.

Suspension of privileges of non-resident for failure to pay judgment

146. If the person failing to satisfy the judgment is not a resident of the province, the privilege of driving a motor vehicle in the province and the privilege of using or having in the province a motor vehicle registered in his name, shall be and become suspended forthwith upon the recovery of the judgment and shall remain suspended until he has complied with the provisions of section 145 by payment or discharge of the judgment and furnished proof of financial responsibility for future motor vehicle accidents. R.S.S. 1940, c. 275, s. 145.

Payment of judgment in instalments

147.—(1) A judgment debtor to whom section 145 or section 146 applies may, on due notice to the judgment creditor, apply to the court which tried the action for the privilege of paying the judgment against him in instalments, and the court may in its discretion so order, fixing the amounts and times of payment of the instalments.

(2) While the judgment debtor is not in default in payment of such instalments he shall, for the purpose of this Part, be deemed not in default in payment of the judgment, and upon proof of financial responsibility for future accidents the board may restore the licence and registration or privilege of such judgment debtor, but whenever default is made in paying an instalment the board shall suspend, and as often as such default is remedied may restore, such licence and registration or privilege. R.S.S. 1940, c. 275, s. 146; 1941, c. 77, s. 18.

Amount of proof of financial responsibility

148. Subject to the provisions of section 151, proof of financial responsibility when required by this Part shall be given by every operator or chauffeur not being an owner, and by every owner for each motor vehicle registered in his name, in at least the following amounts, namely:

(*a*) at least $5,000, exclusive of interest and costs, against loss or damage resulting from bodily injury to or the death of any one person and, subject to such limit for any one person so injured or killed, at least $10,000, exclusive of interest and costs, against loss or damage resulting from bodily injury to or death of two or more persons in any one accident; and

(*b*) at least $1,000, exclusive of interest and costs, for damage to property, except property carried in or

upon the motor vehicle, resulting from any one accident. R.S.S. 1940, c. 275, s. 147.

Manner of proof

149. Subject to the provisions of section 151, proof of financial responsibility may be given in any one of the following forms, namely:

(*a*) the written certificate or certificates, filed with the board, of an authorized insurer that it has issued to, or for the benefit of, the insured named therein a motor vehicle liability policy or policies, in the form required by *The Saskatchewan Insurance Act*, which, at the date of the certificate or certificates, is or are in full force and effect. The certificate or certificates shall certify that the motor vehicle liability policy or policies therein mentioned shall not be cancelled or expire except after ten days' written notice to the board, and until such notice is duly given the certificate or certificates shall be valid and sufficient to cover the term of renewal of the policy or policies by the insurer or any renewal or extension of the term of the insured's licence or registration by the board; or

(*b*) the bond of a guarantee insurance or surety company duly authorized to carry on business in the province. The bond shall be payable to the Provincial Treasurer, shall be in form approved by the board and filed with it, and it shall be conditioned for the payment of the amounts specified in this Part and shall not be cancelled or expire except after ten days' written notice to the board; or

(*c*) the certificate of the Provincial Treasurer that the person named therein has deposited with the Provincial Treasurer a sum of money or security for money approved by him in the amount or value of $11,000 for each motor vehicle registered in the name of such person. The Provincial Treasurer shall accept such deposit and issue a certificate therefor. R.S.S. 1940, c. 275, s. 148.

Additional proof

150. The board may in its discretion at any time require additional proof of financial responsibility to that filed or deposited and may suspend the operator's or chauffeur's licence and owner's registration, if any, until such proof has been furnished. R.S.S. 1940, c. 275, s. 149.

Proof for owner of several cars

151. In the case of an owner of ten or more motor vehicles proof of financial responsibility, in a form and in an amount not less than $50,000, satisfactory to the board, may be accepted as sufficient for the purposes of this Act. R.S.S. 1940, c. 275, s. 150.

Proof for non-resident

152. A person who is not a resident of Saskatchewan may give proof of financial responsibility as provided in section 149 or by filing a certificate of insurance, in form approved by the board, issued by an insurer authorized to transact insurance in the state or province in which such person resides, provided the insurer has filed with the Superintendent of Insurance, in the form prescribed by him:

(*a*) a power of attorney authorizing the Superintendent of Insurance to accept service of notice of process for itself and for its insured in any action or proceeding arising out of a motor vehicle accident in Saskatchewan;

(*b*) an undertaking to appear in any such action or proceeding of which it has knowledge; and

(*c*) an undertaking not to set up any defence to any claim, action or proceeding under a motor vehicle liability policy issued by it, which might not be set up if the policy had been issued in Saskatchewan in accordance with the law of Saskatchewan relating to motor vehicle liability policies, and to satisfy, up to the limits of liability stated in the policy, any judgment rendered and become final against it or its insured by a court in Saskatchewan in any such action or proceeding. R.S.S. 1940, c. 275, s. 151.

Chauffeurs or members of owner's family

153. If the board finds that any driver was, at the time of an offence for which he is convicted, employed by the owner of the motor vehicle involved therein as motor vehicle operator or chauffeur, whether or not so designated, or was a member of the family or household of the owner, and that there was no motor vehicle registered in Saskatchewan in the name of such driver as an owner, then, if the owner of the motor vehicle submits to the board, which is hereby authorized to accept it, proof of his financial responsibility, as provided by this Part, such operator, chauffeur or other person shall be relieved from the requirement of giving proof of financial responsibility on his own behalf. R.S.S. 1940, c. 275, s. 152.

Persons responsible for accidents

154. The board may require proof of financial responsibility from any person who, while operating a motor vehicle, has been involved in and, in the opinion of the board, is responsible in whole or in part for any motor vehicle accident resulting in the death or injury to any person, or damage to property in excess of $50, or from the person in whose name such motor vehicle is registered, or from both; and the board may suspend all owner's registrations and operator's or chauffeur's licences in such cases until proof of financial responsibility is given. R.S.S. 1940, c. 275, s. 153.

Voluntary filing of proof of financial responsibility

155.—(1) An owner's registration or operator's or chauffeur's licence, or, in the case of a person not resident in Saskatchewan, the privilege of operating a motor vehicle in Saskatchewan, or the privilege of operating within Saskatchewan any motor vehicle owned by such non-resident, shall not be suspended or withdrawn if the owner, operator, chauffeur or non-resident has voluntarily filed or deposited with the board, prior to an offence or accident, out of which any conviction, judgment or order arises, proof of financial responsibility, which, at the date of the conviction, judgment or order, is valid and sufficient for the requirements of this Part.

(2) The board shall receive and record proof of financial responsibility voluntarily offered, and if any conviction or judgment against such person is thereafter notified to the

board which, in the absence of proof of financial responsibility, would have caused the suspension of the operator's or chauffeur's licence or owner's registration, the board shall forthwith notify the insurer or surety of such person of the conviction or judgment so reported. R.S.S. 1940, c. 275, s. 154.

Form of policy and duties of insurer.

156.—(1) A motor vehicle liability policy referred to in this Part shall be in the form prescribed by *The Saskatchewan Insurance Act* for an owner's policy or a driver's policy, as the case may require, and approved thereunder by the Superintendent of Insurance for the purposes of this Part.

(2) Any insurer which has issued a motor vehicle liability policy shall, as and when the insured requests, deliver to him for filing, or file direct with the board, a certificate for the purpose of this Part.

(3) Such certificate when filed with the board shall be deemed to be a conclusive admission by the insurer that a policy has been issued in the form prescribed by subsection (1) and in accordance with the terms of the certificate.

(4) Every insurer shall notify the board of the cancellation or expiry of any motor vehicle liability policy, for which a certificate has been issued, at least ten days before the effective date of such cancellation or expiry, and in the absence of such notice the policy shall remain in full force and effect.

(5) Where a person, who is not a resident of the province, is a party to an action for damages arising out of a motor vehicle accident in the province, for which indemnity is provided by a motor vehicle liability policy, the insurer named in the policy shall, as soon as it has knowledge of the action from any source, and whether or not liability under such policy is admitted, notify the board in writing, specifying the date and place of the accident and the names and addresses of the parties to the action and of the insurer, which notification shall be open to inspection by parties to the action.

(6) Notwithstanding anything contained in this Part, the board may decline to accept as proof of financial responsibility the certificates of any insurer which fails to comply with the provisions of subsection (5). R.S.S. 1940, c. 275, s. 155.

Default by insurer of non-resident

157. If an insurer which has filed the documents described in section 152 defaults thereunder, its certificates shall not thereafter be accepted as proof of financial responsibility under this Part so long as default continues, and the board shall forthwith notify the Superintendent of Insurance and the registrar of motor vehicles, or the officer or officers, if any, in charge of the registration of motor vehicles and the licensing of operators and chauffeurs in all provinces and states where the certificates of such insurer are accepted as proof of financial responsibility. R.S.S. 1940, c. 275, s. 156.

Application of bond, money or securities

158.—(1) The bond, money or securities filed or deposited pursuant to the foregoing sections, shall be held by the Provincial Treasurer or the board, as the case may be, as security for payment of any judgment which may be obtained against the owner, operator or chauffeur filing the bond or making the deposit, in an action arising out of damage caused,

after such filing or deposit, by the driving of a motor vehicle, owned by such owner, or driven by such operator or chauffeur, or by any other person for whose negligence the owner, operator or chauffeur is found liable.

(2) Money and securities deposited with the Provincial Treasurer shall be paid or handed over by him on the order of the court or a judge thereof to satisfy a judgment recovered in such court for damages for personal injuries or death, or damage to property, occurring after such deposit, but the money or securities shall not be subject to any other claim or demand. R.S.S. 1940, c. 275, s. 157.

Action on bond

159. If a judgment to which this Part applies is rendered against the principal named in the bond filed with the board and such judgment is not satisfied within fifteen days after it has been rendered, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action on the bond to the extent thereof but no more, in the name of the Provincial Treasurer, and may, to the extent of the bond but no more, recover the amount of his judgment and costs against the person executing the bond, and the amount so recovered shall, on the order of the court in which the judgment is obtained, or a judge thereof, be paid over to the person recovering the judgment. R.S.S. 1940, c. 275, s. 158.

Cancellation and return of security

160.—(1) The board may cancel any bond or return any certificate of insurance, and the Provincial Treasurer may, at the request of the board, return any money or securities deposited pursuant to this Part as proof of financial responsibility, at any time after three years from the date of the original deposit thereof, provided that the owner or driver on whose behalf such proof was given has not, during the said period, or any three year period immediately preceding the request, been convicted of any offence mentioned in section 161, and provided that no action for damages is pending and no judgment is outstanding and unsatisfied in respect of personal injury or damage to property in excess of $100, resulting from the operation of a motor vehicle. A statutory declaration of the applicant under this section shall be sufficient evidence of the facts in the absence of evidence to the contrary in the records of the board.

(2) The board may direct the return of any bond, money or securities to the person who furnished the same, upon the acceptance and substitution of other adequate proof of financial responsibility, pursuant to this Part.

(3) The board may direct the return of any bond, money or securities to the person who furnished the same at any time after three years from the date of the expiration or surrender of the last owners' certificate or operator's or chauffeur's licence issued to such person:

(*a*) if no written notice has been received by the board within such period of any action brought against such person in respect of the ownership, maintenance or operation of a motor vehicle; and

(*b*) upon the filing by such person with the board of a statutory declaration that such person no longer

resides in Saskatchewan, or that he has made a *bona fide* sale of all motor vehicles owned by him, naming the purchasers thereof, and that he does not intend to own or operate any motor vehicle in Saskatchewan within a period of one or more years. R.S.S. 1940, c. 275, s. 159.

Suspension of licence and certificate upon conviction

161.—(1) Subject to the provision contained in subsection (2), the board may suspend the operator's or chauffeur's licence issued to a person, and the certificate of registration of every motor vehicle registered in the name of a person, who, by an order, judgment or conviction of a court, magistrate or justice of the peace in the province, is convicted of any one of the following offences or violations of law, or who, having been arrested for any such offence or violation, has forfeited his bail, namely:

(*a*) racing or driving on a bet or wager upon a public highway, contrary to section 117, if injury to property in excess of $50 or to any person occurs in connection therewith;

(*b*) an accident having occurred, failing to remain at or return to the scene of the accident, contrary to the provisions of section 135, if injury to property in excess of $50 or to any person occurs in connection therewith;

(*c*) failing to report an accident as required by section 136, or to furnish a report or statement as required by or under the authority of the said section;

(*d*) any criminal offence involving the use of a motor vehicle.

(2) If an appeal is taken from such order, judgment or conviction, the board shall not suspend the licence or registration until the appeal is disposed of and unless the appeal is dismissed.

(3) Where a licence or certificate of registration has been suspended under subsection (1) it shall remain suspended and shall not at any time thereafter be renewed, nor shall any new licence or certificate of registration be thereafter issued to or made for such person, until:

(*a*) he has satisfied any penalty imposed by the court in respect of such offence, or his conviction has been quashed; and

(*b*) he has given to the board proof of his financial responsibility for future motor vehicle accidents in the manner and for the amount required by this Part;

but the giving of proof to the board of such financial responsibility for future accidents shall not alter or affect in any way any disqualification to hold a licence or certificate of registration or the suspension or cancellation of an operator's or chauffeur's licence or the certificate of registration of a motor vehicle under the provisions of this Act.

(4) Upon receipt by the board of official notice that an operator or chauffeur licensed, or an owner of a motor vehicle registered, under this Act has been convicted or forfeited his

bail in any other province or in any state in respect of an offence which, if committed in this province, would have been a violation of the provisions of law mentioned in subsection (1), the board may suspend the licence and certificate of registration until such person has given proof of financial responsibility in the same manner as if the said conviction has been made or the bail forfeited by a court in the province. R.S.S. 1940, c. 275, s. 160.

Return of certificate, licence and plates on suspension

162. An owner, operator or chauffeur whose certificate of registration or licence has been suspended, or whose policy of insurance or surety bond has been cancelled or terminated, or who fails to furnish proof or additional proof of financial responsibility upon being required to do so, shall immediately deliver to the magistrate or justice, or return to the board, the certificate of registration, his operator's or chauffeur's licence and the number plates, and if he does not do so the board may cause a peace officer to recover possession thereof, and such owner, operator or chauffeur shall be guilty of an offence and liable on summary conviction to a fine of not less than $10 nor more than $100 for each offence. R.S.S. 1940, c. 275, s. 161.

Driver may drive for owner who has furnished proof

163. If an operator or chauffeur is required to furnish proof of financial responsibility and his licence is or remains suspended solely on the ground of his failure to do so, the board may permit him to drive the motor vehicle of an owner who furnishes or has furnished proof of financial responsibility on his own behalf, but in that case the board shall indorse the licence to that effect, and such operator or chauffeur shall not drive a motor vehicle other than one described in the licence unless and until he furnishes the proof required of him. R.S.S. 1940, c. 275, s. 162.

Suspension of privileges of non-resident upon conviction

164. If a person to whom subsection (1) of section 161 applies is not a resident of the province, the privilege of driving a motor vehicle in the province and the privilege of using or having within the province a motor vehicle owned by him, shall be and become suspended forthwith upon conviction of forfeiture of bail and shall remain suspended until he has complied with the provisions of subsection (3) of section 161 by satisfaction of the penalty imposed by the court and furnished proof of financial responsibility for future motor vehicle accidents:

Provided that the police magistrate or justice of the peace before whom such person was charged may, in his discretion, by a written permit signed by him, authorize the operation of such motor vehicle to the boundaries of the province by such route and by such person as the permit may describe. R.S.S. 1940, c. 275, s. 163.

Report of convictions and judgment

165.—(1) Every police magistrate and justice of the peace with respect to convictions made by him for offences mentioned in section 161 and every clerk or local registrar of a court with respect to orders, judgments or convictions for offences referred to in section 161 and made or given in such court, shall forthwith forward to the board a certificate, transcript or certified copy thereof in the form prescribed by

the board and shall forthwith notify the board of any appeal or proceedings in the nature of appeal therefrom. Such copy, transcript or certificate shall be *prima facie* evidence of the order, judgment or conviction. The magistrate, justice, clerk or other official shall be entitled to collect and receive a fee of twenty-five cents for each certificate, record or report hereby required, which fee shall be paid as part of the court costs, in case of a conviction, by the person convicted, and in case of an order or judgment by the person for whose benefit judgment is issued.

(2) If the defendant is not resident in the province but resides in another province of Canada or in the United States of America, the board shall transmit to the proper officer, if any, in charge of the registration of motor vehicles and the licensing of drivers in the province or state in which the defendant resides, a certificate of the said order, judgment or conviction. R.S.S. 1940, c. 275, s. 164.

Appendix No. 3

1946

CHAPTER 11

An Act respecting Insurance against Loss from Personal Injuries arising out of the Operation of Motor Vehicles.

[*Assented to March 6, 1946.*]

HIS Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

SHORT TITLE.

1. This Act may be cited as *The Automobile Accident Insurance Act, 1946.* Short title

INTERPRETATION.

2. In this Act the expression: Interpretation

1. "benefits" includes weekly indemnity, payments for pain and suffering, out-of-pocket expenses, lump sum payments for dismemberment or death, payments for funeral expenses, or payments in lieu of any of the aforesaid payments; "benefits"

2. "certificate" means a certificate of insurance issued in accordance with the provisions of this Act; "certificate"

3. "child" includes son, daughter, step-son, step-daughter, adopted child, a person to whom an insured stands in *loco parentis,* and a person for whose support an insured was, at the time of his death, liable pursuant to the provisions of any Child Welfare Act; "child"

4. "dealer" means: "dealer"

(*a*) a person, engaged in the business of buying, selling or exchanging motor vehicles, who is in possession of a written contract or agreement with a manufacturer or firm of distributors; or

(*b*) a person engaged either solely or partly in the business of buying, selling or exchanging second hand motor cars or trucks;

5. "dependent child" means a child under the age of eighteen years who is dependent upon an insured, or a person of the age of eighteen years or more who by reason of physical or mental infirmity is unable to maintain himself without the assistance of an insured; "dependent child"

6. "dependent husband" means a husband who by reason of physical or mental infirmity is unable to maintain himself without the assistance of an insured; "dependent husband"

"dependent parent"

7. "dependent parent" means a parent who by reason of physical or mental infirmity is unable to maintain himself or herself. A mother shall be deemed dependent if she is a widow, or the wife of a man who is the inmate of a gaol or penitentiary and has been committed thereto for a period of not less than six months, or of an institution for incurables or for the feeble-minded or insane, or of a man who is permanently incapacitated by incurable disease or insanity from contributing adequately to her support or that of her family, and if she is unable to maintain herself without assistance;

"housewife"

8. "housewife" means a married woman not engaged in a definite regular occupation for wages or for profit and not reporting regularly to a place of employment apart from the residence of such person;

"insurance"

9. "insurance" means insurance provided under this Act;

"insured"

10. "insured" means a person insured against loss as provided by section 12 and who is or whose dependants are entitled to claim benefits whether such person is or is not named in a certificate;

"insurer"

11. "insurer" means The Saskatchewan Government Insurance Office;

"licence year"

12. "licence year" means the twelve months period commencing on the first day of April in any year and ending on the thirty-first day of March in the next succeeding year;

"medical consultant"

13. "medical consultant" means a duly qualified medical practitioner appointed by The Saskatchewan Government Insurance Office to perform the duties prescribed by this Act and such other duties as the insurer may prescribe;

"motor vehicle"

14. "motor vehicle" includes motor cars, locomobiles, power units, motor cycles, pedal bicycles with motor attachment, snowmobiles, snowplanes, tractors, units formed by attaching power units to semi-trailers and all other self propelled vehicles, excepting trolley buses, cars of electric and steam railways and other motor vehicles running only upon rails or tracks or solely upon railway company property, fire engines, fire department apparatus, road rollers and street sprinklers; and for the purpose of this paragraph "tractor" means an engine used for the purpose of drawing a trailer, other than an engine used for such purpose by a farmer in connection with his farming operations, and "power unit" means a motor vehicle used solely for the purpose of drawing a semi-trailer;

"operator's certificate of insurance"

15. "operator's certificate of insurance" means a certificate of insurance issued to a person holding an operator's or chauffeur's licence or other permit to drive a motor vehicle under the provisions of *The Vehicles Act, 1945*;

"owner's certificate of insurance"

16. "owner's certificate of insurance" means a certificate of insurance issued to a person in respect of the ownership of a motor vehicle for which a certificate of registration or a dealer's certificate has been issued under the provisions of *The Vehicles Act, 1945*;

"parent"

17. "parent" includes father, mother, step-father, step-mother, a person who has adopted an insured, and a person who stands in *loco parentis* to an insured;

18. "primary dependant" means: "primary dependant"

(*a*) the wife or dependent husband of an insured unless, at the time of the death of such insured, such wife or dependent husband was living in adultery apart from such insured;

(*b*) the dependent child or children of an insured, if the wife or dependent husband predeceases such insured or is otherwise prevented from qualifying as a primary dependant by reason of clause (*a*) of this paragraph;

(*c*) the *parent or dependent parents of an insured if an insured is not survived by any of the persons qualifying as primary dependants under clause (*a*) or (*b*) of this paragraph;

19. "public service vehicle" means a motor vehicle or trailer classified by and registered as a public service vehicle with The Highway Traffic Board; "public service vehicle"

20. "public highway" means a road allowance or a road, street or lane, and includes any bridge, culvert, drain or other public improvement erected upon or in connection with a public highway, and any parkway, driveway, square or place designed and intended for or used by the general public for the passage of motor vehicles; "public highway"

21. "secondary dependant" includes any dependent child or parent of an insured who is not a primary dependant. "secondary dependant"

PART I.

Application for Insurance and Certificates.

3.—(1) Notwithstanding anything contained in *The Vehicles Act, 1945*, no certificate of registration, licence or permit for any vehicle and no chauffeur's licence, operator's licence, instructional or other driving permit required or authorized for the operation or use of any vehicle under that Act shall be issued or renewed unless the applicant therefor furnishes evidence that his application for a certificate of insurance under this Act has been approved in respect of the particular certificate, licence or permit sought to be issued. Issue of licences, certificates, etc., under *Vehicles Act* conditional

(2) Subsection (1) shall not apply to vehicles owned or operated by the Government of Canada or the government of any other province or state but shall apply to motor vehicles owned and operated by the Government of Saskatchewan and the drivers of such vehicles.

(3) Notwithstanding the provisions of subsection (2), the insurer may negotiate and conclude an agreement with any government therein excluded, to bring any and all motor vehicles belonging to or operated by such government on the public highways of Saskatchewan within the operation of this Act.

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*The word "dependent" was inadvertently omitted from the copy submitted for the printing of the Bill which later became the Act.

Application for insurance

4.—(1) With each application for a certificate of registration, licence or permit for a vehicle, or for a chauffeur's licence, operator's licence, instructional or other permit to drive under *The Vehicles Act, 1945,* or for a renewal thereof, the applicant shall file with a person designated by the regulations an application to The Saskatchewan Government Insurance Office for a certificate of insurance in accordance with the provisions of this Act accompanied by the basic premium and any additional premium which, having been assessed, is due and owing at the date of application.

(2) The insurer may approve the application for the certificate of insurance immediately or if the insurer is of opinion that the premium should be varied in accordance with the provisions of section 6 of this Act, it may withhold such approval until such time as the premium has been varied and has been paid by the applicant.

(3) The application for a certificate of insurance shall be in the form prescribed by the regulations and may be incorporated in the appropriate application form prescribed for use under *The Vehicles Act, 1945.*

Basic rates

5.—(1) The basic premium rate for each owner and driver of a motor vehicle shall be that fixed by regulation for the class of motor vehicle or driver to which the motor vehicle or driver in respect of which the application is made, belongs.

(2) The basic premium rates for the licence year commencing in 1947 and for each succeeding licence year shall be fixed on or before the thirty-first day of December in the preceding year and shall be published in two consecutive issues of *The Saskatchewan Gazette* before the commencement of the licence year.

Insurer may vary rates

6.—(1) The insurer may require any applicant for a certificate of insurance under this Act, to pay an additional premium to the basic rate before approving the application.

(2) The insurer may at any time after the issue of a certificate increase the premium rate payable by any person, if it considers that such person as the owner or operator of a motor vehicle unduly increases the danger to the public.

Additional premium rates in discretion of insurer

7. All questions of fact and the sum payable by way of additional premium under section 6 shall be determined by the insurer, but any person aggrieved by the decision of the insurer, may appeal to the Rates Appeal Board.

Rates appeal board

8.—(1) There shall be a Rates Appeal Board consisting of three members to be appointed by the Lieutenant Governor in Council, one of whom shall be named by the Lieutenant Governor in Council as chairman.

(2) The Rates Appeal Board shall have exclusive jurisdiction to hear and determine all appeals respecting the fixation of additional premium rates and the decision of the board shall be final and no appeal shall lie therefrom.

(3) Within thirty days after notice of the fixation of an additional premium has been posted by registered mail by the

insurer to any person, such person may file a notice of appeal accompanied by written reasons therefor, with the chairman of the Rates Appeal Board provided that no such appeal may be taken after the said period of thirty days has expired except by special leave of the board.

(4) The appeal to the Rates Appeal Board shall be considered an administrative review and the board on review shall render a decision, and may either confirm the additional premium assessment or reduce or increase or vary the same.

(5) No certificate of registration, licence or permit for a vehicle, chauffeur's licence, operator's licence, instructional or other permit shall be issued or renewed under the authority of *The Vehicles Act, 1945,* while an appeal is pending before the Rates Appeal Board unless the amount of the additional premium has been paid subject to refund if the appeal is successful.

(6) All orders, notices and other documents of the Rates Appeal Board shall be signed by the chairman or in the event of his absence or inability to act, by any other member of the board and when so signed shall have like effect as if signed by the chairman.

(7) In the event of the absence or inability to act of any member or in the case of a vacancy in the Rates Appeal Board the remaining members may exercise the powers of the board.

Suspension of privileges for default in payment of premium

9.—(1) Where, in any case, a person fails to comply with the provisions of any notice requiring the payment of any additional premium within the time fixed thereby or within the time fixed for appeal or if an appeal is pending, within such time as is fixed by or pursuant to any order of the Rates Appeal Board, whichever is the longer, an officer or clerk of the insurer shall certify to the default in such form as the regulations may prescribe and upon receipt of such certificate The Highway Traffic Board shall forthwith suspend:

(*a*) the certificate of registration, licence or permit for any vehicle issued to the person in default if such person makes such default as an owner; or

(*b*) the operator's licence, chauffeur's licence, or other permit to drive if such person makes such default as a driver;

and upon such suspension such certificate, licence or permit shall remain suspended until the insurer delivers written notice to The Highway Traffic Board that the default has been remedied.

Unpaid premiums deductible from benefits

(2) In any case where benefits become payable to an owner or operator of a motor vehicle between the date upon which the insurer or the Rates Appeal Board gives him notice of an additional premium and the date of such suspension by The Highway Traffic Board, the additional premium shall be deducted from such benefits payable to such owner or operator.

Certificate conclusive proof of default

(3) A certificate provided for under subsection (1) purporting to be signed by an officer or clerk of the insurer shall be conclusive evidence of the facts therein contained and it

shall not be necessary to prove the signature or office of the person purporting to sign the same.

No licence, permit, etc., issued to persons owing premiums

(4) After the suspension under subsection (1) of a certificate of registration, licence or permit for any vehicle issued in the name of the person in default no certificate of registration, licence or permit for any vehicle whatsoever shall be issued in the name of such person and after the suspension under subsection (1) of an operator's licence, chauffeur's licence or any other permit to drive whatsoever issued in the name of the person in default no operator's licence, chauffeur's licence or any other permit to drive shall be issued to such person, unless and until the amount of any additional premium duly assessed by the insurer prior to such suspension has been paid, whether such additional premium is assessed in the current or any preceding year.

Issue of certificate

10.—(1) Upon payment of the required premium by an applicant for insurance under this Act, the insurer shall, upon approval of the application, issue a certificate of insurance to the applicant.

Form of certificate

(2) The certificate shall be in the form prescribed by the regulations and may be incorporated in the certificate of registration for a motor vehicle or trailer, motor vehicle permit, chauffeur's licence, operator's licence, instructional or other permit issued under authority of *The Vehicles Act, 1945.*

Applicants for motor vehicle permit to comply

11. An applicant for a permit for a motor vehicle under *The Vehicles Act, 1945,* shall, before such permit is issued, make application for insurance and shall pay the basic premium fixed by ther egulations for that class of permit and thep rovisions of this Act shall apply to the same extent as if such permit were a certificate of registration; provided that Statutory Condition 10 shall not apply and that a certificate of insurance issued to such applicant for a permit shall bind the insurer only during such time as the motor vehicle in respect of which such permit and certificate are issued is being operated on a public highway in Saskatchewan and the certificate shall expire on the date on which such permit expires.

PART II.

Insurance and Benefits.

Insurance against loss resulting from bodily injuries

12.—(1) Subject to the provisions of this Act, every person is hereby insured in the amounts hereinafter specified against loss resulting from bodily injuries sustained by him directly, and independently of all other causes, through accidental means, excluding suicide while sane or insane or any attempt thereat while sane or insane, provided that such bodily injuries are suffered as a result of:

(*a*) driving, riding in or on, or operating a motor vehicle moving on a public highway in Saskatchewan; or

(*b*) collision with or being struck, run down or run over by a motor vehicle moving on a public highway in Saskatchewan.

(2) Subject to the provisions of this Act, an operator's or owner's certificate of insurance shall further insure the person named therein and any person who, domiciled in Saskatchewan, leaves the province as a passenger in the vehicle designated in an owner's certificate, in the amounts hereinafter specified against loss resulting from bodily injuries sustained directly, and independently of all other causes, through accidental means, excluding suicide while sane or insane or any attempt thereat while sane or insane, provided that such bodily injuries are suffered by such person as a result of driving, riding in or on, or operating such vehicle moving on a public highway beyond the boundaries of Saskatchewan but within Canada or the United States of America.

(3) The word "moving" in clauses (*a*) and (*b*) of subsection (1) and in subsection (2) shall not be construed to include any movement of a motor vehicle which is consequential upon or incidental to a cranking or repair of such motor vehicle which is being performed on a public highway.

(4) Any person insured but not named in a certificate of insurance may recover benefits in the same manner and to the same extent as if named therein as an insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor.

Principal sum for loss of life

13.—(1) If bodily injuries sustained in any accident occasioned under any of the circumstances set out in section 12 do totally and continuously disable an insured within twenty days from the time of the accident and prevent him from performing any and every duty pertaining to any occupation or employment, and during the period of such continuous total disability, and within one hundred and twenty weeks from the date of the accident, result in loss of life of such insured, the insurer shall pay the sum specified in section 16 as the principal sum for loss of life, and shall in addition pay for the period between the date of the disability and the date of such loss of life the weekly indemnity payable under section 14.

(2) If within ninety days from the date of the accident, loss of life results to an insured solely from such bodily injuries, the insurer shall pay irrespective of continuous disability, the sum specified for loss of life.

(3) (*a*) If such bodily injuries do not result in loss of life and within twenty days from the time of the accident do totally and continuously disable an insured from performing any and every duty pertaining to any business or occupation, and during the period of such continuous total disability, but within one hundred and twenty weeks from the date of the accident, result in any one or more of the losses enumerated in clause (*b*) of this subsection, the insurer shall pay the sum set opposite such loss, and shall in addition pay, for the period between the date of the disability and the date of such loss, the weekly indemnity provided under section 14;

(*b*) If within ninety days from the date of the accident, any one of the following losses results

to an insured solely from such bodily injuries, the insurer shall pay, irrespective of continuous total disability, the respective indemnities herein provided, but only one of the said indemnities shall be payable to any one person for injuries resulting from one accident to such person.

FOR LOSS OF:

Both hands by severance at or above the wrists	$2,000.00
Both feet by severance at or above the ankles	$2,000.00
One hand at or above the wrist and one foot at or above the ankle, by severance	$2,000.00
Entire sight of both eyes, if irrecoverably lost	$2,000.00
Entire sight of one eye, if irrecoverably lost, and one hand at or above the wrist, by severance	$2,000.00
Entire sight of one eye, if irrecoverably lost, and one foot at or above the ankle, by severance	$2,000.00
One arm by severance at or above the elbow	$1,350.00
One leg by severance at or above the knee	$1,350.00
Either hand by severance at or above the wrist	$1,000.00
Either foot by severance at or above the ankle	$1,000.00
Entire sight of one eye if irrecoverably lost	$1,000.00
Thumb and index finger of either hand at or above the metacarpo-phalangeal joints	$ 500.00
Thumb of either hand at or above the metacarpo-phalangeal joints	$ 250.00

Weekly indemnity

14.—(1) If bodily injuries sustained in any accident occasioned under any of the circumstances set out in section 12 do within twenty days from the time of the accident totally and continuously or partially and continuously disable an insured and prevent him from performing one or more important daily duties pertaining to his occupation or employment and his income therefrom, whether wages or profit or both, is thus reduced, the insurer shall, subject to paragraphs 1 and 2 of this subsection, pay weekly indemnity for the period of such continuous disability, being either:

(*a*) the difference between his average weekly earnings during the twelve months preceding the accident and the amount which he is earning, or is able to earn, weekly, following the accident; or

(*b*) the amount by which $20 exceeds the amount which he is earning or able to earn, weekly, following the accident;

whichever is the less provided that any payment made by the insurer under this subsection shall not be less than an amount sufficient to increase his weekly income to a minimum of $10.

1. If such reduction of income is the result of continuous total disability preventing an insured from performing any and every duty pertaining to his occupation or employment, the insurer shall pay a weekly indemnity for a period not exceeding fifty-two consecutive weeks.

2. After the payment of the weekly indemnity for fifty-two weeks, as provided in paragraph 1 of this subsection, if

an insured is totally and continuously disabled by such bodily injuries from engaging in any occupation for wages or profit, the insurer shall continue weekly payment of the same amount thereafter until the insured has received a total of $3,000.

(2) If such reduction of income results from continuous partial disability of an insured preventing him from performing one or more important daily duties pertaining to his occupation or employment or from like continuous partial disability following total disability, the insurer shall pay weekly indemnity for the period of such partial disability not exceeding fifty-two consecutive weeks.

(3) Notwithstanding the provisions of paragraph 1 of subsection (1) if such bodily injuries do, within twenty days from the date of any accident totally and continuously disable a housewife and prevent her from performing any and all household duties, the insurer shall pay for the period of such continuous total disability, a weekly indemnity of $12.50 for a period not exceeding in the aggregate six consecutive weeks.

(4) For the purposes of subsection (1) the average weekly earnings of a farmer or rancher during the twelve months preceding the accident shall conclusively be presumed to be $20.

(5) If bodily injuries sustained in any accident occasioned under any of the circumstances set out in section 12 do within twenty days from the time of the accident totally and continuously disable an insured and thus disqualify him from claiming benefits under *The Unemployment Insurance Act, 1940 (Canada)* the insurer shall pay for the period of such total and continuous disability a weekly indemnity equivalent to the amount he was entitled to claim weekly as benefits under *The Unemployment Insurance Act, 1940 (Canada)* prior to the time of the accident, provided that the maximum weekly indemnity payable under this subsection shall not exceed $20.

(6) By agreement the insurer may, in any case where it deems proper and at any time or times, make or direct commutation or lump sum payments of indemnity payable under this section, or otherwise alter the form of payment as in the circumstances seems most likely to benefit an insured.

(7) There shall be a period of seven days immediately following an accident in respect of and during which no weekly indemnity shall be payable under this section.

Additional benefits

15.—(1) The insurer shall pay in addition to all other benefits:

(*a*) a lump sum allowance for pain and suffering and out-of-pocket expenses, the amount and determination of which shall be in the absolute discretion of the insurer, according to the circumstances, provided that the sum payable in respect of loss from any one injury shall not exceed the sum set opposite such injury in Schedule A to this Act and provided further that the total sum payable under this clause in respect of all injuries sustained by one person in any one accident shall not exceed in the aggregate $225;

(*b*) if such bodily injuries result in the loss of the life of an insured, $125 in lieu of funeral expenses.

(2) Where under any contract, bylaw or other arrangement any person would have been liable to pay hospital or medical benefits or payments in lieu thereof had this Act not been passed, such liability shall continue and any agreement to the contrary shall be null and void.

Death benefits

16.—(1) Subject to the provisions of section 13, where an insured dies as a consequence of any peril insured against, the insurer shall pay the sum of $3,000 to the primary dependant and $625 to each of the secondary dependants:

Provided that if the aggregate claims of the secondary dependants exceed the sum of $2,000 the sum of $2,000 shall be equally divided among the secondary dependants.

(2) Notwithstanding the provisions of subsection (1) where more than one person is classed as a primary dependant, the total sum payable to such persons shall be calculated as though only one of such persons were a primary dependant and the remainder of that class were secondary dependants, but the total sum payable to all such persons shall be divided equally among them.

(3) In any case where no person is entitled to claim benefits under subsection (1), the insurer shall pay to the personal representative of an insured, the sum of $1,000, provided that the insured is of the full age of sixteen years at the date of the accident.

Payment to guardian, etc.

17.—(1) Where a primary dependant is a child of an insured, the insurer shall pay all sums payable to such dependant to the Minister of Social Welfare to be invested or otherwise dealt with by him in the same manner and to the same extent as the Minister of Social Welfare is authorized by statute to invest or otherwise deal with money belonging to a child committed to him.

(2) Wherever under this Act, the insurer is liable to pay the whole or any part of any sum to a person who is mentally defective, such sum or part thereof shall be paid to the guardian or committee of such person or to the Administrator of the Estates of the Mentally Incompetent, as the case may be, to be held for the use and benefit of such mentally defective person according to law.

(3) In any other case where the insurer in its absolute discretion determines that it is desirable for the welfare of any person entitled to benefits under this Act the insurer may appoint any official administrator to receive any sums payable thereunder to such person, and to hold the same for the use and benefit of such person.

(4) Where, under this section a person is appointed for any of the purposes therein prescribed, a receipt in writing signed by the person entitled under this Part to receive any payment shall be a sufficient discharge therefor and shall exonerate the insurer from all further liability.

18. The insurer shall pay all sums accruing and payable to an insured at the time of his death to his personal representative. Sums other than principal paid to personal representative

19. The insurer shall make all payments in the manner and to the persons specified in this Act and if any person who is entitled thereto dies before receiving payment, his personal representative shall not be entitled to take by representation except where expressly provided herein. No representation

20. No insured or any of his dependants shall agree with any person to assign, waive or forego any of the benefits to which any of them are or may become entitled under this Act and every agreement purporting to do so shall be absolutely null and void. No waiver

21.—(1) Except with the approval in writing of the insurer, no moneys payable under this Part, shall be assigned, charged or attached, nor shall they pass by operation of law except to a personal representative nor shall any claim be set off against them. No attachment

(2) Subsection (1) shall not apply where an action has been brought for necessaries supplied or contracted for at any time after the accident.

22. Where a person suffers loss in respect of which any benefits are or may be paid to such person or his dependants or any one on behalf of any of them, the liability for such loss of the driver and owner of any motor vehicle involved in the accident out of which such loss arises, shall if valid current certificates have been issued such driver and owner, be reduced in direct suit or by way of contribution or otherwise by the amount of maximum benefits which the insurer is authorized by law to pay the person sustaining the loss, his dependants and all persons on behalf of any of them, notwithstanding that any or all persons to whom payment may be directed in respect of such loss have disentitled themselves to benefits by reason of the breach of a statutory condition. Benefits in lieu of action

23.—(1) Notwithstanding the provisions of section 22, where the accident is caused by: Subrogation

(*a*) the gross negligence or wilful misconduct of any person; or

(*b*) any person who fails to remain at or return to the scene of an accident contrary to section 135 of *The Vehicles Act, 1945*; or

(*c*) the negligence of any person other than:

(*i*) the owner, whose motor vehicle is involved in such accident, who holds an owner's certificate in which such vehicle is designated, provided that such vehicle is operated by the holder of an operator's certificate;

(*ii*) the driver of such vehicle, who at the time of such accident holds an operator's certificate, provided that such vehicle is designated in an owner's certificate;

the insurer, upon making any payment or assuming liability therefor under this Part, shall be subrogated to all rights of recovery of the person to or in respect of whom benefits are payable or his personal representative against any person and may bring action in the name of the person to or in respect of whom benefits are payable or his personal representative to enforce such rights.

(2) If the net amount recovered after deducting the costs of recovery is not sufficient to provide a complete indemnity for the loss or damage suffered by an insured, prior to the payment of any benefits by the insurer in respect of such loss, such amount shall be divided between the insurer and an insured in the proportion that such loss or damage bears to the benefits for which the insurer has paid or assumed liability to an insured and his dependants and to anyone on behalf of any of them.

Exceptions from benefits

24. The insurer shall not be liable to pay benefits under this Act to any of the following persons or their dependants:

(*a*) the driver and passengers of a self-propelled vehicle not required to be registered under *The Vehicles Act, 1945;*

(*b*) a person who, by reason of the accident, is entitled to claim compensation under *The Workmen's Compensation (Accident Fund) Act;*

(*c*) any person or the accomplice of a person who is doing or omitting to do any act or thing contrary to the provisions of the *Criminal Code of Canada* or having been engaged in such criminal offence is fleeing from the scene thereof and whether or not there is any casual connection between the criminal offence or the fleeing and the bodily injuries sustained;

(*d*) the driver or owner-occupant of a motor vehicle which is driven in a manner amounting to gross negligence or wilful misconduct;

(*e*) a driver who is under the influence of intoxicating liquor, or drugs, to such an extent as to be for the time being incapable of properly controlling the motor vehicle;

(*f*) any passenger who is under the influence of intoxicating liquor, or drugs, to such an extent that he interferes with the proper control of the vehicle and thus contributes to the accident;

(*g*) the driver of a motor vehicle, which is required to be registered under *The Vehicles Act, 1945,* who is not in possession of a current operator's licence, chauffeur's licence or any permit to drive, whether the vehicle is or is not registered for the current year;

(*h*) the driver or owner-occupant of a motor vehicle which being required to be registered under *The Vehicles Act, 1945,* is not so registered, whether or not such driver is in possesion of a current operator's licence, chauffeur's licence or any permit to drive;

(*i*) the driver or the owner-occupant of a motor vehicle to which is attached a trailer which, being required to be registered under *The Vehicles Act, 1945,* is not so registered;

(*j*) the driver and passengers who over-crowd a motor vehicle to the extent that such over-crowding interferes with the proper driving of the motor vehicle;

(*k*) persons riding in or on any portion of a motor vehicle not designed for the seating of passengers or the carrying of a load;

(*l*) passengers riding in or on that portion of a truck designed for the carrying of a load who are not properly seated in or upon the truck in such way as can be considered reasonably safe for that mode of conveying passengers;

(*m*) the driver or owner-occupant or any other person who causes or permits a bicycle, hand-sleigh, toboggan, skiis, or any other thing for which a current certificate of registration or licence has not been issued, to be attached to a motor vehicle, for the purpose of being pushed or pulled by such vehicle;

(*n*) any person who is injured as a result of taking hold of or attaching himself to a motor vehicle for the purpose of being pushed or pulled by such vehicle and who is not riding in or on any portion of the motor vehicle designed for the seating of passengers or the carrying of a load;

(*o*) any person who, in an application for insurance under this Act, falsely describes the motor vehicle to be insured or knowingly misrepresents or fails to disclose in an application for an operator's licence, chauffeur's licence or any other driving permit, or for registration of a motor vehicle, or in an application for insurance, any fact required to be stated therein, to the prejudice of the insurer.

STATUTORY CONDITIONS.

Statutory conditions

25. The right to recover benefits under this Act shall be dependent upon the following conditions:

Proof to show interest of claimant

1. Any claim made under this Act by a claimant shall be subject to proof of the interest of the claimant.

Who to make proof

2. (*a*) Proof of claim shall be made by an insured or, in the absence of an insured or his inability to to make the same, by his agent or any of the persons authorized to receive payment on behalf of an insured under the provisions of section 17 of this Act, such absence or inability being satisfactorily accounted for;

(*b*) In case of the death of an insured proof of claim shall be made by the primary dependant, although other persons may be entitled to receive benefits, except that:

(*i*) in case of the absence of the primary dependant or his inability to make the same, proof

may be made by his agent or any other person authorized to receive payment of the benefits to which the primary dependant is entitled, such absence or inability being satisfactorily accounted for, or, if the said persons neglect or refuse to do so, by a person to whom any benefits are payable;

(*ii*) where there is no primary dependant or where the primary dependant is a child of an insured the personal representative of the insured shall make the proof of claim or, if the personal representative neglects or refuses to do so within a reasonable time, the Director of Child Welfare or any person entitled to receive benefits under this Act shall make the proof of claim.

Notice of claim

3. Any person entitled to make a claim under this Act shall:

(*a*) give notice of claim to the insurer not later than thirty days from the date of the accident, provided that failure to give notice shall not invalidate the claim if it is shown that it was not reasonably practicable to give such notice within such time and that notice was given as soon as was reasonably practicable;

(*b*) furnish to the insurer such proof of claim as is reasonably possible and of the circumstances of the happening of the accident and the loss occasioned thereby within ninety days after the happening of the accident;

(*c*) if so required by the insurer, furnish a certificate from a physician as to the cause and nature of the accident for which the claim is made and as to the duration of the disability caused thereby.

Onus on claimant where reports required

4. Where the claimant is one of the persons required by section 30, 32 or 33 to furnish the reports therein specified, he shall comply in every particular and the onus of proving compliance with the said sections shall be upon the claimant.

Limited liability where aggregate benefits exceed money value of the income of an insured

5. If the benefits for loss of income provided by this Act together with the accident benefits payable under other contracts of insurance upon the person of an insured make up an aggregate indemnity in excess of the average income of an insured prior to the accident, the insurer shall be liable only for such proportion of the benefits specified in section 14 as the loss of income bears to the aggregate benefits payable under such other contracts upon the person of an insured.

Proof of claim

6. (*a*) The insurer shall, upon receiving notice of an accident, furnish to the claimant the forms prescribed by the regulations and if such forms are not so furnished by the insurer within fifteen days after receipt of such notice, the claimant shall be deemed to have complied with the requirements of this Act as to proof of claim if he submits, within the time fixed by this Act for filing such

proofs, a written statement of the happening and character of the accident and of the extent of the loss for which the claim is made.

(*b*) The insurer shall have the right and the claimant shall afford to the insurer an opportunity to examine the person of an insured when and as often as it may reasonably require while the claim thereunder is pending and also in the case of death of an insured to make an autopsy subject to any law of the province relating to autopsies.

(*c*) Such an examination shall be made by a duly qualified medical practioner or medical consultant at the expense of the insurer.

Time for payment

7. (*a*) The insurer shall pay all benefits payable under this Act, except indemnity payable in respect of loss of income on account of disability, within sixty days after receipt of proof of claim.

(*b*) The indemnity for loss of income on account of disability shall be paid within thirty days after receipt of proof of claim and as long thereafter as the insurer remains liable for the disability, provided that the insurer may, in case the disability continues beyond a period of sixty days, require proof thereof for such period which proof shall be furnished within thirty days after the termination of every such period in respect of which claim is made.

Waiver

8. The insurer shall not be deemed to have waived any condition under this Act either in whole or in part, unless the waiver is clearly expressed in writing, signed by the insurer.

Limitation of action

9. Any action or proceeding against the insurer for the recovery of any claim under this Act shall be commenced within six months after the cause of action arose.

Term of insurance

10. Irrespective of the date on which an application for insurance is made or the date on which an insurance certificate is granted, such certificate shall expire at midnight on the thirty-first day of March next following the date of its issue.

Effect on suspension or cancellation of driving privileges

11. In no case where the rights and privileges of an insured with respect to his ownership, maintenance, use or operation of a motor vehicle have been suspended or cancelled under any law, shall the insurer be required to refund or rebate the whole or any part of the insurance premium, but on restoration of such rights and privileges such person shall, subject to the payment of any additional premium required by the insurer under the provisions of section 6 of this Act, become automatically reinstated.

Effect of improper use, etc.

12. Subject to the provisions of this Act, where a motor vehicle is operated, used or driven for a purpose for which it has not been registered in accordance with the provisions of *The Vehicles Act, 1945,* or by a driver whose licence is not such as entitles him to drive such vehicle, under *The Vehicles Act,* the insurer shall pay all benefits payable in respect of any accident in which such vehicle is involved but may deduct from the claim of any owner or operator of such a vehicle or of

such driver, the difference between the premium actually paid in respect of such vehicle or driver and the proper premium payable under the circumstances.

Change of address or capacity to operate vehicle

13. Any person holding a certificate of insurance under this Act, shall forthwith notify the insurer of any change in his address or the occurrence of any affliction or injury likely to affect his capacity to operate a motor vehicle.

Benefits for hernia

14. (*a*) No benefits shall be payable in respect of hernia, except clinical hernia of a disabling character which directly results from an accident which imposes liability for resulting damage or injury upon the insurer, provided that, when such hernia is the sole injury in respect of which benefits are claimed, an insured reports his condition to the insurer within seven days immediately following the occurrence of such accident.

(*b*) If an insured does not submit to treatment prescribed by a duly qualified physician or surgeon within two weeks of such accident benefits shall cease to be payable upon the expiry of such two weeks, provided that the insurer may in its absolute discretion extend the period for such submission.

(*c*) If an insured submits to an operation for hernia, the period of his disability shall cease upon the expiry of forty-two days following the day of such operation, provided that the said period may be extended by the insurer if it is satisfied that complications warranting such extension have resulted directly from such operation.

15. The insurer shall be permitted at all reasonable times to inspect any motor vehicle designated in an owner's certificate and its equipment.

PART III.

Jurisdiction of Court.

Actions to be brought in district court

26.—(1) Notwithstanding anything contained in *The King's Bench Act* and *The District Courts Act,* all actions to recover benefits against the insurer shall, irrespective of the amount involved, be brought, tried and determined in a district court.

(2) Neither party shall have the right to appeal to any court constituted, organized or maintained by the province.

No award of costs

27. No costs shall be allowed by the court in any proceedings under subsection (1) of section 26.

Consolidation of actions for benefits or insurance money

28.—(1) Where several actions are brought for the recovery of benefits payable under this Act in respect of a single accident, the court may consolidate or otherwise deal therewith in order that there shall be but one action for and in respect of all the claims made in such actions.

(2) In all actions where several persons are entitled to benefits payable under the provisions of this Act, the court may apportion among the persons entitled thereto any sum directed to be paid, and may give all necessary direction and relief.

Relief from forfeiture

29. Where there has been imperfect compliance with the statutory conditions as to the proof of claim to be given by the insured or other claimant or as to any other matter or thing required to be done or omitted by an insured or other claimant with respect to the loss, and a consequent forfeiture or avoidance of the benefits in whole or in part, and the court deems it inequitable that the benefits should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it may deem just.

PART IV.

Miscellaneous

Reports of accidents by persons affected

30.—(1) Every person in charge of a motor vehicle who is directly or indirectly involved in an accident, in which damage to property apparently exceeds $50 or personal injuries result to any person, and every person sustaining personal injuries in such accident shall report the accident forthwith to the nearest or most accessible police officer and to the head office of the insurer at Regina and furnish both the police officer and the insurer with written statements concerning the accident in the form prescribed by the regulations.

(2) Where such person is physically incapable of making such a report and there is another person who is involved in the same accident, such other person shall make such report.

(3) The insurer may require any other person deemed to have knowledge of an accident or persons involved or the injuries sustained, to furnish such information as the insurer may desire.

Duty of police officer

31. A police officer receiving a report of an accident shall secure from the person making the report or by other inquiries where necessary, full particulars of the accident including the persons involved and the extent of the personal injuries or property damage resulting therefrom and for that purpose he may require the parties to furnish any such additional information as he may require, and he shall make such supplementary reports of the accident as the insurer may deem necessary to complete its records, and to establish, as far as possible, the causes of the accident, the persons responsible therefor and the extent of the personal injuries and property damage, if any, resulting therefrom.

Additional reports

32. The insurer may require any person involved in an accident, or having knowledge of an accident, to furnish such additional information in any way that it deems proper and make such supplementary reports of the accident as the insurer may deem necessary to complete its records and to establish as far as possible, the cause of the accident, the persons responsible and the extent of the personal injuries and property damage, if any, resulting therefrom.

Duty of public service vehicle owner

33. Every owner of a public service vehicle shall forthwith report to the insurer in full detail any accident causing the death of, or injury to, any person, or damage to any property other than that of the owner arising from and in connection with the operation of such vehicle.

Duty of garage keeper

34. Every owner of a garage or automobile repair shop or wrecker's business and every dealer shall upon receiving a motor vehicle which, to his knowledge or belief, has been involved in an accident involving personal injuries or damage to property exceeding $50 forthwith report the matter to the insurer in the form prescribed by the regulations.

Duty of physician

35. Every physician and every surgeon attending or consulted upon any case of injury to a person involved in a motor vehicle accident shall furnish a report forthwith and from time to time as the insurer may require, in respect of the injuries in such form as may be required to the insurer.

Duty of employer

36. Every employer shall at the request of the insurer, furnish forthwith a sworn statement of the earnings of the insured in such form as the insurer may prescribe.

Offence

37.—(1) Any person failing to do any act or thing or to perform any duty under sections 30 to 36 shall be guilty of an offence and liable on summary conviction to a fine not exceeding $50.

(2) Where such person is charged with an offence, the onus of proving that any report was furnished in accordance with the provisions of sections 30 to 36 shall be upon him.

Notices, how given

38.—(1) Any notice given by the insurer for any of the purposes of this Act, when the mode thereof is not otherwise expressly provided, may be given in the case of an insured, by mailing it by prepaid post addressed to the post office address given in his original application for insurance or otherwise notified in writing to the insurer.

(2) Delivery of any written notice to the insurer for any of the purposes of this Act, where the mode thereof is not otherwise expressly provided, may be by letter delivered at the head office of the insurer or sent by registered post addressed to the insurer, its manager or agent at such head office.

Effect of delivery of receipt for premium

39. Where a receipt for the premium under this Act has been delivered it shall be as binding on the insurer as if the certificate had been delivered although in fact it has not been delivered, and where a licence plate has been issued, pending the issue of a certificate of registration such licence plate shall be deemed a receipt for premium for the purpose of this section; provided that such receipt or such licence plate shall have no effect as a certificate under this section from and after the granting of a certificate or from the notification of a refusal of the application for a certificate.

Regulations

40. In addition to the powers contained in section 23 of *The Saskatchewan Government Insurance Act, 1946,* the Lieutenant Governor in Council may make regulations for the better carrying out of the provisions of this Act according to their true intent.

41. Notwithstanding anything contained in *The Vehicles Act, 1945,* the insurer shall have access to all documents, books, reports, records and other things and to all facilties of, belonging to or available to The Highway Traffic Board and the Treasury Department, as the insurer may in its discretion deem necessary or desirable for the better carrying out of this Act, the provisions of *The Saskatchewan Government Insurance Act, 1946,* and the regulations. Right of access to records, etc.

42.—(1) The Saskatchewan Government Insurance Office shall carry out the provisions of this Act and do all acts and things requisite and incidental thereto and, for greater certainty and without prejudice to the generality of the foregoing, the powers of The Saskatchewan Government Insurance Office shall extend to the following matters, namely: Powers additional to existing powers

(*a*) the introduction, establishment, promotion, supervision and financing of an educational program relating to safety practices on the public highways;

(*b*) the recommendation to The Highway Traffic Board of the suspension or cancellation of any operator's or chauffeur's licence or other permit to drive or the registration of any motor vehicle of any person.

(2) Any person authorized under the regulations to accept applications for insurance and premiums in payment thereof shall not be deemed to be an agent within the meaning of any statute which requires the licensing of insurance agents.

(3) Any person appointed to settle or adjust any claim for indemnity arising out of the provisions of this Act shall not be deemed to be an adjuster within the meaning of any statute which requires the licensing of insurance adjusters.

43. The provisions of *The Saskatchewan Insurance Act* shall not apply to insurance under this Act. *Insurance Act* not to apply

44. Wherever there is any conflict or repugnancy between the provisions of this Act and any other Act of the Legislature the provisions of this Act shall prevail. Provisions of Act to prevail

45. No action whatever, and no proceeding by way of injunction, *mandamus,* prohibition or other extraordinary remedy shall lie or be instituted against any person in respect of any *bona fide* act or omission in connection with the administration or carrying out of the provisions of this Act or the regulations. No action, etc., against persons administering Act

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SCHEDULE A.

(Section 15)

1.—(1) The sum appearing opposite the type of injury expressly described in this Schedule, shall be the maximum allowance for pain and suffering and out-of-pocket expenses in respect of that injury.

(2) For the purpose of this Schedule the word "injury" shall be construed to include "Amputations" and other consequent losses.

2. Subject to the maximum amount specified in section 15 (1) (*a*), the insurer may pay any sum which in its discretion it deems reasonable under the circumstances, in respect of injuries not specified, and may augment any maximum payment in cases of specified injuries where complications arise.

3. No person injured within the Province of Saskatchewan shall be entitled to recover any sum provided for in this Schedule if he removes himself out of Saskatchewan, unless such removal is necessitated by the need for immediate medical aid or unless the insurer approves the same.

4. No payment shall be made under this Schedule unless a second attendance by a duly qualified medical practitioner is required.

5. Bones, chipped, cut or bruised shall not be classed as fractures, and these injuries shall be deemed to be bruises and lacerations.

6. The maximum sum payable under this Schedule in respect of greenstick or incomplete fracture of the bone shall be fifty per cent. of the sum shown in the Schedule to be payable in respect of a fracture of that bone.

7. Subject to the maximum amount specified in section 15 (1) (*a*), in case of multiple injury, the payment covering the major injury plus fifty per cent. of the payment for each additional injury may be allowed.

MAXIMUM ALLOWANCES.

SIMPLE FRACTURES.

8.	Humerus	$ 80.00
9.	Radius and Ulna (shafts)	50.00
10.	Radius	45.00
11.	Ulna	40.00
12.	Finger or Metacarpal, one	15.00
13.	Finger or Metacarpals, more than one	20.00
14.	Carpus	30.00
15.	Femur	225.00
16.	Patella, operative	115.00
	Non-operative	30.00
17.	Tibia and Fibula (shafts) excepting Malleoli	120.00
18.	Potts (including fracture of internal Malleolus)	60.00
19.	Tibia (shaft)	60.00
20.	Fibula	30.00
21.	Malleolus, external or internal	40.00
22.	Calcaneous or Talus	120.00
23.	Tarsus (excepting Calcaneous or Talus)	35.00
24.	Toe or Metatarsal, one or more	25.00
25.	Lower Jaw	100.00
26.	Malar or nasal bones	30.00
27.	Clavicle	30.00
28.	Scapula	30.00
29.	Ribs, one or more (or sternum)	20.00
30.	Sacrum	130.00
31.	Coccyx, operative	125.00
	Non-operative	15.00
32.	Pelvis (except Coccyx)	200.00

33.	Vertebrae, lateral or spinous process (one or more)	85.00
34.	Vertebrae body (one or more) including reduction, fixation and after treatment	150.00

DISLOCATIONS.

35.	Shoulder	$ 45.00
36.	Elbow	40.00
37.	Wrist	35.00
38.	Hip	130.00
39.	Knee	75.00
40.	Semi-Lunar Cartilage, operative	90.00
	Non-operative	40.00
41.	Ankle	40.00
42.	Tarsus	35.00
43.	Finger, Toe, one	20.00
44.	Fingers or Toes, more than one	25.00
45.	Carpus	30.00
46.	Jaw	30.00
47.	Clavicle	35.00

AMPUTATION CASES.

48.	Shoulder (disarticulation)	$225.00
49.	Arm	190.00
50.	Forearm or Wrist	160.00
51.	Hip (disarticulation)	225.00
52.	Thigh	225.00
53.	Leg, Symes or Tarsal	175.00
54.	Knee (disarticulation)	175.00
55.	Finger or Toe, one	50.00
56.	Finger or Toe with metacarpal or metatarsal, one	55.00
	Each additional finger or toe with or without metatarsal or metacarpal	10.00

INJURIES WHERE THE FOLLOWING PROCEDURES ARE NECESSARY.

57.	Removal of eye	$120.00
58.	Extraction of traumatic cataract	100.00
59.	Removal of foreign body within globe of eyeball (giant magnet operation)	100.00
60.	Iridectomy—to establish artificial pupil	110.00
61.	Submucous resection	100.00
62.	Orchidectomy	110.00
63.	Hydrocele-operative cure	100.00
	-Tapping	10.00
64.	Laparotomy	200.00
65.	Lower Bronchoscopy and Tracheotomy	200.00

OTHER INJURIES.

66.	Hernia (unilateral)	$150.00
67	Hernia (bilateral)	195.00
68.	Foreign body in larynx	60.00
69.	Severe lacerations and bruises	150.00
70.	Sprains	60.00
71.	Ruptured kidney, spleen or liver	225.00

72.	Ruptured bladder	225.00
73.	Perforating wounds of perineum	195.00
74.	Loss of teeth	60.00
75.	Concussion with or without fracture, non-operative	150.00
76.	Concussion, operative	225.00

Appendix No. 4

ESTIMATED COST OF PROPOSED DEATH BENEFITS AND FUNERAL EXPENSES (MALE AND FEMALE) FOR THE PROVINCE OF SASKATCHEWAN

FIGURES TAKEN FROM THE SASKATCHEWAN HIGHWAY TRAFFIC BOARDS RECORDS

Primary Dependent Benefit	$ 3,000.00
Each Secondary Dependent Benefit	625.00
Funeral Expense Benefit	125.00

Exhibit "A"

Age Group	Automobile Fatalities: Five Years 1940-44	Automobile Fatalities: Annual Average	Estimated No. of Dependents Per Person Killed	Proposed Cost For Each Person Killed	Estimated Total Death Benefits and Funeral Expenses for One Year
1 - 15	40	8	0	$ 125.00	$ 1,000.00
16 - 20	49	9.8	1	3,125.00	30,625.00
21 - 25	22	4.4	2	3,750.00	16,500.00
26 - 30	12	2.4	3	4,375.00	10,500.00
31 - 45	42	8.4	4	5,000.00	42,000.00
46 - 50	13	2.6	3	4,375.00	11,375.00
51 - 55	13	2.6	2	3,750.00	9,750.00
56 - 65	35	7	1	3,125.00	21,875.00
66 & over	24	4.8	0	125.00	600.00
	250	50.			144,225.00
			Reserve for Disastrous Claims (20%)		28,845.00
					173,070.00

ESTIMATED COST OF PROPOSED $1,000.00 PAYMENT TO PERSONS WITHOUT DEPENDENTS FOR THE PROVINCE OF SASKATCHEWAN

Exhibit "B"

15.4 average annual automobile fatalities (without dependants) age 16 and over	$ 15,400.00
Reserve for Disastrous Claims (20%)	3,080.00
	$ 18,480.00

Saskatchewan Automobile Accidents
PROPOSED INDEMNITY FOR LOSS OF INCOME
For Total and Partial Disability — Male and Female (16 Years and Over)
Figures Taken from The Saskatchewan Highway Traffic Board Records

Exhibit "C"

Type of Injury	NO. OF CASES INCLUDING RESULTANT DEATH		COST PER CASE				TOTAL COST	
			TOTAL DISABILITY at $25.00 Per Week		PARTIAL DISABILITY at $12.50 Per Week		Per Case	For all Cases in 1 year
	5 Years 1940-44	Annual Average	Average Weekly Period	Total Cost	Average Weekly Period	Total Cost		
Skull	285	57.	22	$ 550.00	32	$ 400.00	$ 950.00	$ 54,150.00
Eyes	98	19.6	6	150.00	6	75.00	225.00	4,410.00
Nose	125	25.	2	50.00	4	50.00	100.00	2,500.00
Mouth & Teeth	116	23.2	6	150.00	4	50.00	200.00	4,640.00
Chest Injuries	246	49.2	6	150.00	4	50.00	200.00	9,840.00
Spine Injuries	120	24.	8	200.00	4	50.00	250.00	6,000.00
Concussion	75	15.	12	300.00	14	175.00	475.00	7,125.00
Hip Injuries	82	16.4	8	200.00	6	75.00	275.00	4,510.00
Fractured Limbs	375	75.	12	300.00	8	100.00	400.00	30,000.00
Collar Bone	179	35.8	8	200.00	4	50.00	250.00	8,950.00
Internal Injurics	92	18.4	8	200.00	6	75.00	275.00	5,060.00
Wrenches (Shoulder & Limbs)	90	18.	4	100.00	4	50.00	150.00	2,700.00
Shock								
Glass Cuts	547	109.4	2	50.00	2	25.00	75.00	8,205.00
Bruises								
	2,430	486.						

	$ 148,090.00
Reserve for Disastrous Claims (20%)	29,618.00
	177,708.00
Allowance for Unreported Accidents (25%)	44,427.00
	222,135.00

NOTE:—The complete absence of information concerning the occupation and earning power of those sustaining injuries during the period for which statistics are available has not permitted an accurate measure of cost under the item of weekly indemnity in respect of the various types of injuries contained in the above exhibit. There are, however, very few persons who will receive less than the maximum weekly allowance for total disablity in this province.

The calculation of the cost of partial disability payments has been based on the broad assumption that the average payment in respect of this item will be $12.50 per week. There is, of course, no reason to believe that this is a trust-worthy calculation. It is suggested, nevertheless, that the variation of a few dollars either way will make little difference in the overall estimate of the cost of operation.

Saskatchewan Automobile Accidents
ESTIMATED COST OF PROPOSED ADDITIONAL INDEMNITY FOR HOUSEWIVES

Exhibit "D"

$12.50 Per Week for Maximum of Six Weeks

Type of Injury	NO. OF CASES		Estimated Average Period in weeks	Cost per case	Total Cost
	5 Years 1940-44	Annual Average			
Skull	83	16.6	22	$ 75.00	$1,245.00
Eyes	29	5.8	6	75.00	435.00
Nose	41	8.2	2	25.00	205.00
Mouth & Teeth	43	8.6	6	75.00	645.00
Chest Injuries	58	11.6	6	75.00	870.00
Spine Injuries	47	9.4	8	75.00	705.00
Concussion	13	2.6	12	75.00	195.00
Hip Injuries	25	5.	8	75.00	375.00
Fractured Limbs	112	22.4	12	75.00	1,680.00
Collar Bone	60	12.	8	75.00	900.00
Internal Injuries	40	8.	8	75.00	600.00
Wrenches (Shoulder & Limbs)	62	12.4	4	50.00	620.00
Glass Cuts	183	36.6	2	25.00	915.00
	796	159.2			9,390.00
Reserve for Disastrous Claims (20%)					1,878.00
					11,268.00
Allowance for Unreported Accidents (25%)					2,817.00
					$14,085.00

Saskatchewan Automobile Accidents
ESTIMATED COST OF INDEMNITY FOR PAIN AND SUFFERING AND OUT-OF-POCKET EXPENSES — ALL AGES

Exhibit "E"

Figures Taken from Actual Cases of the Records of the Saskatchewan Highway Traffic Board.

Type of Injury	Number of Injured		Estimated Average Allowance Per Case	Estimated Total Cost for all Cases In one Year
	Five Years 1940-1944	Annual Average		
Skull	370	74.0	$ 200.00	$14,800.00
Eyes	98	19.6	75.00	1,470.00
Nose	125	25.0	50.00	1,250.00
Mouth & Teeth	127	25.4	85.00	2,159.00
Chest Injuries	300	60.0	112.50	6,750.00
Spine Injuries	140	28.0	175.00	4,900.00
Concussion	81	16.2	122.50	1,984.50
Hip Injuries	88	17.6	225.00	3,960.00
Fractured Limbs	411	82.2	110.00	9,042.00
Collar Bone	181	36.2	47.50	1,719.50
Internal Injuries	143	28.6	110.00	3,146.00
Wrenches (Shoulder & Limbs)	194	38.8	50.00	1,940.00
Glass Cuts	579	115.8	27.50	3,184.50
	2,837	567.4		56,305.50
Reserve for Disastrous Claims (20%)				11,261.10
				67,566.60
Allowance for Unreported Accidents (25%)				16,891.65
				$84,458.25

Saskatchewan Automobile Accidents

CHART SHOWING TREND IN THE INCIDENCE OF ACCIDENTS PER VEHICLE PREWAR PERIOD 10 YEARS 1932-1941

Figures Taken from the Saskatchewan Highway Traffic Board Records

Exhibit "F"

Year	No. of Registrations	No. of Accidents	Average per 100 Vehicles	MOVING AVERAGE			
				GROUPED YEARS		Moving Average	Annual Increase
				Years	No. of Years		
1932	91,091	413	.4534	1932-4	3 years	.8559	
1933	85,049	930	1.0935	1933-5	3 years	.9768	.1209
1934	91,430	947	1.0358	1934-6	3 years	.9741	–.0027
1935	95,116	776	.8158	1935-7	3 years	1.0127	.0386
1936	102,646	1,094	1.0658	1936-8	3 years	1.0862	.0735
1937	105,400	1,200	1.1385	1937-9	3 years	1.0774	–.0088
1938	109,010	1,150	1.0549	1938-40	3 years	1.1865	.1091
1939	120,472	1,258	1.0442	1939-41	3 years	1.3853	.1988
1940	126,939	1,821	1.4345	1940-41	2 years	1.5443	.1590
1941	131,504	2,170	1.6501	1941	1 year	1.6501	.1058
	1,058,657	11,759					.7942
				Annual Average Increase			.0882

Saskatchewan Automobile Accidents

SUMMARY OF COST EXHIBITS "A" TO "E"

Exhibit "G"

Schedule "A"	— Death Benefits and Funeral Expenses—Male and Female	173,070
Schedule "B"	— Additional $1,000 Indemnity	18,480
Schedule "C"	— Loss of Income—Male and Female	222,135
Schedule "D"	— Special Housewives Indemnity	14,085
Schedule "E"	— Pain and Suffering and Out-of-Pocket Expenses	84,458
	Total Estimated Cost Per Year	$ 512,228

Saskatchewan Automobile Accidents

Exhibit "H"

	Estimated Registrations for 1946	Proposed Insurance Rates	Total Expected Premiums
Operator's	180,000	$1.00	$180,000.00
Chauffeur's	500	3.00 average	1,500.00
Private Cars	95,000	5.00	475,000.00
Commercial Trucks (C Licence)	10,000	20.00 average	200,000.00
Farm	30,000	7.00 average	210,000.00
Class A	200	45.00 average	9,000.00
Class B	150	20.00	3,000.00
Class D	200	20.00 average	4,000.00
Class E	600	60.00 average	36,000.00
P. S. V.	75	300.00 average	22,500.00
L.	250	150.00 average	37,500.00
U. L.	90	150.00 average	13,500.00
M. Cycle	750	12.00	9,000.00
Dealers	600	10.00	6,000.00
Trailers, Private and Farm	6,000	1.00	6,000.00
Trailers E	25	20.00	500.00
Trailers C	100	15.00	1,500.00
Estimated Revenue			$1,215,000.00

Total No. of Vehicles 144,040

Saskatchewan Automobile Accident Insurance

ESTIMATED RESULTS FOR THE YEAR 1946

Exhibit "I"

	Incidence of Accidents per 100 Vehicles	Estimated Cost of Claims
1940-44 Yearly Average Based on 132,650 Vehicles (See Exhibit "G")	1.2860	$ 512,228
1940-44 Yearly Average based on 1946 Estimate of 144,040 Vehicles (See Exhibit "H")	1.2860	556,210
Increase to 1941 incidence (See Exhibit "F")	1.6501	713,687
Add Average annual increase in accident incidence (See Exhibit "F")	.0882	751,834
	1.7383	
Estimated Cost of Claims occurring outside of Saskatchewan—10%		75,183
		827,017
Estimated Cost of Administration including adjustment expense—10% og Income		121,500
Total Estimated Cost		948,517

OPERATING SURPLUS

Estimated Income	$1,215,000
Estimated Total Expenditure	$ 948,517
Estimated Surplus	$ 266,483

Appendix No. 5

PREMIUM RATES CHARGEABLE UNDER THE AUTOMOBILE ACCIDENT INSURANCE ACT, 1946.

OPERATORS:

White Licence	$1.00
Blue Licence	$2.00
Red Licence	$4.00
Instruction Permit	$2.00
Under-Age Permit	$3.00
Exchange of Instruction Permit for Operator's Licence	No Charge

CHAUFFEURS:

Taxis		Bus	
White	$ 4.00	White	$ 2.00
Blue	$ 6.00	Blue	$ 4.00
Red	$10.00	Red	$ 8.00
Truck		**Other**	
White	$ 3.00	White	$ 2.00
Blue	$ 5.00	Blue	$ 4.00
Red	$ 8.00	Red	$ 6.00

PRIVATE PASSENGER CAR REGISTRATION:

Ordinary Use	$ 5.00
Commercial Delivery or Hearse	$15.00
Police Work	$20.00
Ambulance	$35.00

PUBLIC SERVICE VEHICLE (PASSENGER):

CLASS P.S.V.

For each motor vehicle operated for the transportation of passengers or passengers and express for compensation over a route any portion of which is outside the corporate limits of a city or for chartered operations:

Having a passenger seating capacity not exceeding 8	$ 80.00
Having a passenger seating capacity exceeding 8 but not exceeding 15	$200.00
Having a passenger seating capacity exceeding 15 but not exceeding 25	$300.00
Having a passenger seating capacity exceeding 25	$400.00

CLASS L.

For each motor vehicle operated for the transportation of passengers for compensation within an area having a radius of 15 miles from the owner's headquarters where a route is not specified by The Highway Traffic Board:

Having a wheel base not exceeding 111 inches	$125.00
Having a wheel base exceeding 111 inches but not exceeding 123 inches	$125.00
Having a wheel base exceeding 123 inches	$125.00
Buses operated within corporate limits	$225.00

CLASS U.L.

For each motor vehicle operated for the transportation of passengers provincially or for "Drive Yourself" purposes	$150.00

CLASS B

For each motor vehicle operated for the transportation of children to or from school for compensation:

Having a seating capacity 7 passengers and under	$10.00
Having a seating capacity in excess of 7 passengers	$35.00

PUBLIC SERVICE VEHICLES (TRUCK):

CLASS A

For each truck or trailer or semi-trailer engaged in the transportation of general merchandise over specified route or chartered operation for compensation:

Not exceeding ½ ton	$10.00
Exceeding ½ ton but not exceeding 1 ton	$15.00
Exceeding 1 ton with gross weight not exceeding 12,000 lbs.	$25.00
" " " " " " " " 16,000 lbs.	$35.00
" " " " " " " " 20,000 lbs.	$45.00
" " " " " " " " 24,000 lbs.	$55.00
" " " " " " " " 27,000 lbs.	$65.00
" " " " " " " " 30,000 lbs.	$75.00
" " " " " " " " 34,000 lbs.	$85.00

CLASS E

For each truck or trailer or semi-trailer engaged in the transportation of fuel petroleum products, fuel petroleum products drums, household goods, machinery, machinery parts, binder twine, flour and dressed poultry:

	Tank Trucks	Others
Not exceeding ½ ton	$ 15.00	$10.00
Exceeding ½ ton but not exceeding 1 ton	$ 25.00	$15.00
Exceeding 1 ton with gross weight not exceeding 12,000 lbs.	$ 50.00	$25.00
" " " " " " " " 16,000 lbs.	$ 57.00	$35.00
" " " " " " " " 20,000 lbs.	$ 71.00	$45.00
" " " " " " " " 24,000 lbs.	$ 92.00	$55.00
" " " " " " " " 27,000 lbs.	$120.00	$65.00
" " " " " " " " 30,000 lbs.	$155.00	$75.00
" " " " " " " " 34,000 lbs.	$195.00	$85.00

CLASS D

For each truck or trailer or semi-trailer engaged in the transportation of milk and cream and dressed poultry:

Not exceeding ½ ton	$10.00
Exceeding ½ ton but not exceeding 1 ton	$15.00
Exceeding 1 ton with gross weight not exceeding 12,000 lbs.	$25.00
" " " " " " " " 16,000 lbs.	$28.00
" " " " " " " " 20,000 lbs.	$33.00
" " " " " " " " 24,000 lbs.	$40.00
" " " " " " " " 27,000 lbs.	$48.00
" " " " " " " " 30,000 lbs.	$60.00
" " " " " " " " 34,000 lbs.	$72.00

FARM TRUCK:

For each truck or semi-trailer having a manufacturer's rated capacity

Not exceeding ½ ton	$ 5.00
Exceeding ½ ton but not exceeding 1 ton	$ 5.00
Exceeding 1 ton but not exceeding 1½ tons	$ 6.00
Exceeding 1½ tons but not exceeding 2 tons	$ 8.00
Exceeding 2 tons	$10.00
Notwithstanding the above, the insurance charge for trucks of a year model prior to 1936 shall be	$ 5.00

COMMERCIAL VEHICLE:

For each truck or trailer having a manufacturer's rated capacity

Not exceeding ½ ton	$10.00
Exceeding ½ ton but not exceeding 1 ton	$ 5.00
Exceeding 1 ton but not exceeding 2 tons	$28.00
Exceeding 2 tons	$45.00
Tractor	$ 5.00

MOTORCYCLES:

For each motorcycle without side car or carrier	$15.00
For each motorcycle with side car or carrier	$11.00
For each pedal bicycle or scooter with motor attachment, without side car or carrier	$12.00
For each pedal bicycle or scooter with motor attachment with side car or carrier	$ 8.00

DEALER:

For each set of plates $10.00

TRAILERS (FARM OR PRIVATE) ..... $ 1.00

REPLACEMENT OF PLATE OR LICENCE ..... No Charge

TRANSFERS:

If there is a greater premium charge on the transferred vehicle, then the difference in premium charge between both vehicles will be assessed. If the new vehicle carries a lower rate, no extra premium will be assessed neither will there be any refund.

PERMIT:

For the purpose of this schedule a "passenger mile" means the transportation of one passenger one mile, and a "ton mile" means the transportation of one ton one mile.

		Insurance Charge
(1)	For transportation of passengers, per passenger mile 1/30th cent, minimum	$1.00
(2)	For transportation of goods, wares, merchandise or other commodities per ton mile 1/10th cent, minimum	$1.00
(3)	For each permit to a dealer or manufacturer, to transport one vehicle or an unlicensed truck	.50c
(4)	For each permit to a non-resident for the transportation of exhibits or livestock to be shown or displayed at exhibitions or race meets, or for the transportation of dogs to field trials	.50c
(5)	For each permit other than the above referred to	.50c

On certificates of registration issued on or after October 1st, and on which the annual insurance premium rate as shown above is $20.00 or in excess thereof, only half such premium rate shall be charged for insurance.

Appendix No. 6

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